UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

SIXTH COMMITTEE
1st meeting
held on
Tuesday, 18 September 1990
at 5.30 p.m.
New York

# SUMMARY RECORD OF THE 1st MEETING

Temporary Chairman: Mr. DE MARCO (President of the General Assembly)

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ELECTION OF THE CHAIRMAN

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Distr. GENERAL
A/C.6/45/SR.1
21 September 1990

ORIGINAL: ENGLISH

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*The meeting was called to order at 5.30 p.m.*

ELECTION OF THE CHAIRMAN

1. *Mr. AGUILAR* (Argentina) nominated Mr. Mikulka (Czechoslovakia).

2. In the absence of further nominations and in accordance with rule 103 of the rules of procedure, *the TEMPORARY CHAIRMAN* declared Mr. Mikulka (Czechoslovakia) elected by acclamation.

3. *Mr. Mikulka (Czechoslovakia) was elected Chairman by acclamation.*

*The meeting rose at 5.35 p.m.*

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

SIXTH COMMITTEE
2nd meeting
held on
Friday, 21 September 1990
at 3 p.m.
New York

# SUMMARY RECORD OF THE 2nd MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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ELECTION OF OFFICERS

ORGANIZATION OF WORK

STATEMENT BY THE CHAIRMAN

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Distr. GENERAL
A/C.6/45/SR.2
1 October 1990
ENGLISH
ORIGINAL: SPANISH

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The meeting was called to order at 3.30 p.m.

ELECTION OF OFFICERS

1. The CHAIRMAN said that, following consultations, candidates had been nominated for the offices of Vice-Chairman (2 posts) and Rapporteur. If he heard no objection, he would take it that the Committee wished to elect Mr. Yan-Yaap Van de Velde (Netherlands) and Mr. Khabouji N'Zaji Lukabu (Zaire) as Vice-Chairman, and Mr. Saeid Mirzaee-Yengejeh (Islamic Republic of Iran) as Rapporteur.

2. It was so decided.

3. Mr. HAJNOCZI (Austria) paid tribute to the Chairman and the other officers of the Committee who had just been elected and congratulated them on their election to their respective posts. The manifold issues before the Committee during the forty-fifth session, at the commencement of the United Nations Decade of International Law, were of particular relevance for the observance, promotion and development of international law.

ORGANIZATION OF WORK (A/C.6/45/1; A/C.6/45/L.1)

4. The CHAIRMAN drew the Committee's attention to the letter addressed to him by the President of the General Assembly (A/C.6/45/1) referring to the 13 agenda items which had been allocated to the Sixth Committee. With respect to the reports it was to consider, those of the United Nations Commission on International Trade Law (UNCITRAL) and the International Law Commission (ILC) and the reports of the Secretary-General on observer status of national liberation movements, on the status of the Protocols Additional to the Geneva Conventions of 1949 and on effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives were already available in all languages. The other reports would be ready before the beginning of October and the report of the Committee on Relations with the Host Country would be available at a later date, as was customary.

5. Taking into account the decision adopted by the General Assembly with regard to the closing date of the forty-fifth session, he suggested that the Sixth Committee should organize its programme of work so that it could conclude its work no later than Tuesday, 20 November 1990. Consultations had already been held prior to the opening of the session on the order and dates of consideration of agenda items. The results of those consultations were reflected in the organization of work proposed in document A/C.6/45/L.1, except for two changes which had been introduced after the consultations. First, the Office for Political and General Assembly Affairs and Secretariat Services had announced that the Main Committees of the General Assembly would not meet on 27 and 28 September and 1 October 1990, because of the convening of the World Summit for Children. Second, on the recommendation of the General Committee, the General Assembly had decided to defer consideration of the item on the development and strengthening of good-neighbourliness between States until the forty-sixth session. If the organization of work were approved and adhered to with a certain degree of

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flexibility, as was customary, the Committee would most likely fulfil its mandate satisfactorily.

6. As the document prepared by the Secretariat on the organization of work (A/C.6/45/L.1) would not be available until Monday morning, 24 September, he suggested that the Committee should adopt the organization of work solely on the basis of the informal document which had been circulated and consider the other aspects of organization when it had the document in question.

7. Mr. MONTES DE OCA (Mexico) asked whether consideration had been given to the possibility of deferring consideration of item 139, Peaceful settlement of disputes between States, until item 138, United Nations Decade of International Law had been considered. In that connection, the replies received from States on the observance of the Decade reflected very broad agreement that the adoption of a convention on the peaceful settlement of disputes might be one of the items to be included in the Programme of Action for the Decade.

8. Moreover, in order to facilitate the consultations which delegations would have to hold with their respective Governments on the selection of items for the Programme of Action, it would be extremely practical if the lawyers who were to participate in the consideration of the report of the International Law Commission were to arrive in New York a few days early so that the meetings of the working group on the United Nations Decade of International Law on 25 and 26 October, could be intensified. If the working group met periodically when there was free time during the consideration of the report of the International Law Commission, it could doubtless have its final document ready for the Committee's debate on 12 to 14 November.

9. The CHAIRMAN said that, at the current meeting, the intention had been to clarify questions arising from the holding of the World Summit for Children, but not to reopen those questions which had already been dealt with in informal consultations. He was therefore surprised by the proposal that the item on the peaceful settlement of disputes should be considered separately from the report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, which had traditionally been debated together in the Sixth Committee. Although separate consideration of the peaceful settlement of disputes between States might be justified by the item on the Decade, in his view, most members of the Committee preferred to take up both questions in the usual manner.

10. With regard to the dates scheduled for the item on the United Nations Decade of International Law, it should be remembered that, in the initial proposal on the organization of work, different dates had been set for its consideration, but that in response to the very arguments which had been reiterated by the Mexican delegation, a decision had been taken to schedule it after the debate on the report of the International Law Commission. That had been done so that the directors of the legal departments participating in the consideration of the report of the International Law Commission could be present during the debate on the Decade of

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(The Chairman)

International Law. Moreover, he wished to make it clear that the proposed organization of work did not necessarily mean that debate on the items could not begin prior to those dates, since the working groups would begin their work very shortly.

11. In his view, it would be best to retain the organization of work as proposed. Otherwise, and in the light of the changes resulting from the holding of the World Summit, the Committee might encounter difficulties in concluding the second phase of its work by the target dates, since it not only had to discuss the various items, but also had to submit and adopt draft resolutions.

12. Mr. MONTES DE OCA (Mexico) welcomed the Chairman's reply to his first suggestion. His second comment had not been understood, since it was not his aim to change the scheduled dates; he simply felt that the Working Group on the Decade of International Law should begin to function from 25 and 26 October onwards.

13. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the proposed programme of work.

14. It was so decided.

15. The CHAIRMAN suggested that consultations should be expedited for the election of the Chairmen of the Working Group on the United Nations Decade of International Law and of the informal consultations on the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier.

16. He drew attention to the first report of the General Committee (A/45/250) adopted by the Assembly, and, in particular, to paragraph 8, concerning the number of members required to declare a meeting of a Main Committee open and permit the debate to proceed.

17. He informed the Committee that, if a delegation provided 220 copies of a statement it intended to deliver, the text would be distributed in advance to all members of the Committee by the conference officers. Otherwise, copies made available by delegations would be available at the end of the meeting. If he heard no objection, he would take it that that procedure was acceptable to the Committee.

18. It was so decided.

19. Mr. HANAFI (Egypt) suggested, given the technical nature of statements at Sixth Committee meetings, that delegations should deliver them at morning meetings, with afternoons reserved for informal consultations.

20. The CHAIRMAN said that the suggestion would, as far as possible, be taken into account.

21. Mr. TREVES (Italy) asked whether the item on the security and safety of diplomatic missions and representatives would be taken up on the afternoon of Tuesday, 25 September, or the morning of Wednesday, 26 September.

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22. The CHAIRMAN said that it was intended to begin consideration of the item on the morning of 26 September, but that if the item relating to the report of the United Nations Commission on International Trade Law ended sooner than expected, the item on the security and safety of diplomatic missions and representatives could be taken up on the afternoon of 25 September.

23. Mr. MARTINEZ-GRONDA (Argentina) stressed the importance of interpretation coverage of the Working Groups and informal consultations.

24. The CHAIRMAN said that everything possible would be done to secure interpretation services.

## STATEMENT BY THE CHAIRMAN

25. The CHAIRMAN said that one of the principal objectives of the United Nations Charter was to establish the conditions necessary for the upholding of justice and respect for international law. The Charter assigned the General Assembly an active role in the promotion of international co-operation and the progressive development and codification of international law. The dozens of conventions and other international instruments adopted under the auspices of the United Nations and other international forums, in virtually every domain, demonstrated the substantial progress made over the past 45 years. Several declarations by the General Assembly had helped to form a consensus on the interpretation of the abstract principles of international law and the formulation of new rules and principles. Note should be taken in that connection of the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, adopted 20 years earlier in resolution 2625 (XXV), of 24 October 1970.

26. Despite such progress, international law still lacked a fully satisfactory role in relations among States. As demonstrated by very recent events, the use of brute force and attempts to impose one's will on others in violation of the norms and principles of international law remained contemporary realities.

27. The declaration of the period 1990-1999 as the United Nations Decade of International Law (General Assembly resolution 44/23) would enable the international community to formulate a concerted strategy and measures to improve the effectiveness of international law, thus enabling it to occupy its rightful place and become a firm foundation of international relations. The new world climate represented a particularly propitious circumstance for the attainment of the Decade's objectives, since there was an awareness of international interdependence, common responsibility for the future of mankind and the supremacy of international law in international relations. The ever-greater acceptance of the cumpulsory jurisdiction of the International Court of Justice provided one example of the increasing adherence of States to the principle of justice and international law.

28. The Sixth Committee, one of the most active and productive of United Nations bodies, had made an effective contribution to the consolidation of international

(The Chairman)

law, and it was to be hoped that at the current session it would once again provide the General Assembly with sound legal advice and demonstrate its whole-hearted commitment in the service of peace, justice and international law.

29. Mr. KHANI (Syrian Arab Republic) noted the importance of the statement by the Chairman, and expressed the hope that it would be duly reflected in the summary record of the meeting.

The meeting rose at 4.20 p.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

SIXTH COMMITTEE
3rd meeting
held on
Monday, 24 September 1990
at 10 a.m.
New York

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## SUMMARY RECORD OF THE 3rd MEETING

Chairman: Mr. MIKULKA (Czechosolvakia)

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ORGANIZATION OF WORK (*continued*)

AGENDA ITEM 141: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-THIRD SESSION

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Distr. GENERAL
A/C.6/45/SR.3
2 October 1990
ENGLISH
ORIGINAL: FRENCH

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The meeting was called to order at 10.20 a.m.

ORGANIZATION OF WORK (*continued*) (A/C.6/45/1; A/C.6/45/L.1)

1. The CHAIRMAN drew attention to document A/C.6/45/L.1, paragraph 6, which contained the timetable adopted at the second meeting. If he heard no objection, he would take it that the Committee wished to take note of document A/C.6/45/L.1 and to adopt the other recommendations set out in sections III to VI.

2. *It was so decided*.

AGENDA ITEM 141: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-THIRD SESSION (A/45/17)

3. Mr. BONNELL (Chairman, United Nations Commission on International Trade Law (UNCITRAL)), introducing the Commission's report on the work of its twenty-third session (A/45/17), said that consideration of the draft chapters of the legal guide on drawing up contracts in international counter-trade transactions had been the major item on the Commission's agenda for that session. Although the subject of counter-trade had been on the Commission's agenda for the past 15 years under different names, particularly under the general title of "barter-like contracts", the decision to begin active work on the subject had first been made in 1986 when the Commission had been discussing the question of future work in the area of the new international economic order. Although nearly all developed as well as developing countries engaged in counter-trade, it had become a means of carrying on international trade that was increasingly associated with the developing countries. At the Commission's twenty-first session, in 1988, a study of legal issues in international counter-trade had been submitted by the Secretariat (A/CN.9/302). After discussing the study, the Commission had decided that it would be desirable to prepare a legal guide on drawing up counter-trade contracts, and had requested the Secretariat to prepare a draft outline of such a legal guide so as to determine what action should be taken. At the twenty-second session the draft outline had been received from the Secretariat (A/CN.9/322). On the basis of that outline the Commission had decided that such legal guide should be prepared, and the Secretariat had been requested to prepare draft chapters of the guide for preliminary consideration at the twenty-third session.

4. It was well known that the practice of counter-trade posed many practical problems for the practitioner. What was less well known was that it also posed many legal problems that were different from the usual problems encountered in a contract of sale or of services where the counter-performance was the payment of money. The decision to prepare a legal guide had been influenced by the fact that such legal problems and the possible solutions were not widely understood, and by the fact that that lack of understanding was detrimental to international trade, in particular in the case of the developing countries.

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(Mr. Bonnell)

5. The Commission had been of the view that a legal guide should be prepared to help participants in counter-trade transactions to overcome the legal problems involved in them. It considered itself particularly well suited to undertake the task, since it was a specialized legal body in international trade law and was composed of States from all regions and at different levels of economic development. Although somewhat similar work was being undertaken by the Economic Commission for Europe, UNCITRAL had been of the view that the differences in membership and orientation of the two organizations would ensure that its own work would not duplicate what was being done in the Economic Commission.

6. The Secretariat had placed before UNCITRAL, at its twenty-third session, a draft of more than half the number of chapters (A/CN.9/332 and Add.1-7) that were expected to be included in the final version of the legal guide. The Commission had devoted a major part of the session to a careful review of them, which attested to the importance it attached to the subject. While a large number of individual suggestions for improvement had been made, the Commission had found that the legal guide addressed the concerns of the parties and attempted to deal with them in a fair and equitable manner. It had been especially pleased that the draft had taken into account the fact that the level of economic development and the interests of the parties involved in counter-trade transactions might be different, and that those factors might affect legal as well as more strictly business considerations. It had been evident by the end of the discussion that the Commission was well satisfied with the overall approach taken by the Secretariat in the draft chapters, both as to the structure of the legal guide and as to the nature of the description and advice contained therein.

7. UNCITRAL had then considered the procedure that should be followed to complete the preparation of the legal guide. It had been thought that a working group should review the remaining draft chapters before placing the draft legal guide before the Commission. Since counter-trade was being considered as part of the Commission's commitment to contribute to the development of the new international economic order, the most appropriate body to review the remaining chapters would have been the Working Group on the New International Economic Order. However, the Commission had recognized that that Working Group was currently fully occupied with the draft model law on procurement, and might remain so for some time. It had been noted that the Working Group on International Payments would be available in 1992, and in view of the time needed to complete the remaining draft chapters, it had been decided that a meeting of that Working Group might be scheduled to that end for September 1991. Anticipating that the final text of the legal guide would be ready in 1991, the Commission had requested the Secretariat to submit the text to it at its twenty-fifth session, in 1992, for final approval.

8. Judging from the general discussion at the session and from delegations' reactions to the draft legal guide, the guide would be an important and useful contribution to traders generally and to those engaged in or contemplating engaging in counter-trade in particular, and it would effectively improve the quality of counter-trade contracts. It would be as effective and useful as the UNCITRAL Legal Guide on Drawing Up International Contracts for the Construction of Industrial

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Works. Although the subjects covered by the two legal guides were different, their objectives were similar in that they were designed to assist traders in negotiation and in drawing up fairer contracts, which would protect their legitimate interests.

9. It was not always easy to measure the contribution that a legal guide drawn up by UNCITRAL would make to the harmonization and the unification of international trade law. Merely giving figures as to the number of copies distributed in the different languages was certainly not sufficient. The contribution must be measured in less direct ways. Therefore, it was highly satisfying to report that the Legal Guide on Drawing Up International Contracts for the Construction of Industrial Works had received high acclaim in professional circles and reputable professional and legal journals around the world. The readership was expanding and the Secretariat was continually receiving requests for copies, which indicated that it was widely used. Reports received from individuals and organizations that had used the Guide showed that it had been very useful and had helped to improve the quality of negotiations and the drawing up and administrating of contracts. That experience gave the Commission great confidence in the future of the draft legal guide on counter-trade currently in preparation.

10. As usual, the Commission had received reports from the Working Groups and the Secretariat on the progress made in the other projects currently being undertaken. As was customary, the consideration of those reports seldom took up much time because, in accordance with the Commission's practice, once it decided to undertake a project and referred it to a working group, UNCITRAL did not engage in a discussion of the merits of the draft text until the Working Group was ready to submit a final text. That policy, which had been instituted in the early years of the Commission in order to avoid duplication of work, was of even greater relevance today since the Working Groups were composed of all the States that were members of the Commission and all other States and interested international organizations were invited to participate in the meetings as observers. Nevertheless, even though it did not discuss the merits of a draft text being prepared in a working group, the Commission attached great importance to receiving the reports of the Working Groups because that enabled it to monitor progress made and plan the programme of work for the next few years.

11. The reports of the Working Groups and the Secretariat in 1990 indicated that the programme of work remained full. All three Working Groups had important subjects on their agendas and draft texts were expected to be submitted for consideration by the Commission in due course. That meant that the Commission was already fully engaged for a long time into the future.

12. The Working Group that was most advanced in its current project was the Working Group on International Payments, which was preparing a draft Model Law on International Credit Transfers. At its current session the Commission had received reports from the Working Group (A/CN.9/328 and A/CN.9/329) on the two sessions that it had held between the twenty-second and the twenty-third sessions of UNCITRAL.

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13. An unusual development in the Working Group had drawn the particular attention of the Commission. The report on the session held in November 1989 in Vienna set out at some length the rather serious concern of one of the delegations about the direction that the draft Model Law had taken. That delegation had stated that the text as it was being developed by the Working Group would be harmful rather than helpful to modern international credit transfers. The unusual aspect of that development was not that there had been controversy in the Working Group. There were always disputes about what the specific rules should be on the important points in a text being drawn up. There was also often controversy over the topics to be considered. However, it was unusual for a delegation to insist that a project being undertaken by the Commission was important and, at the same time, state that the text that was slowly emerging from the discussions in the Working Group might be harmful rather than helpful. The Commission had been led to believe that, although the views on the subject were strongly held, it would be possible to reconcile the different points of view and prepare a text that would be generally acceptable. As a result, UNCITRAL had expressed the hope that the Working Group would be able to resolve the outstanding issues and requested it to submit a text at its twenty-fourth session in the expectation that the Commission would be able to consider and adopt the Model Law at that time. Moreover, the Working Group had already held one session since the twenty-third session of UNCITRAL. It was his understanding that significant progress had been made and, while there was still much to be done at the Working Group's session to be held at Vienna later in 1990, the Commission could expect to have a draft text that would permit it to complete the Model Law at its twenty-fourth session.

14. The second most advanced project was the one entrusted to the Working Group on the New International Economic Order, namely the preparation of a model law on procurement. The report of the Working Group (A/CN.9/331) showed that it had discussed a draft of the model law that the Secretariat had prepared. The Working Group had made a number of suggestions to the secretariat as to how the text might be improved. UNCITRAL had noted that the Working Group would meet again in October 1990 to consider the Secretariat's revised draft of the model law and had only made one substantive comment to the effect that the work on the model law should take into account procurement by private companies as well as Governments since private companies were increasingly resorting to the type of procedures discussed in the draft model law. The Commission was not yet in a position to say when the draft model law would be ready for submission.

15. The Working Group on International Contract Practices had also submitted a report (A/CN.9/330). UNCITRAL had requested it in 1988 to examine the draft uniform rules on guarantees being prepared at that time by the International Chamber of Commerce (ICC). After reviewing the draft rules, it had become clear to the Working Group that, owing to their contractual nature, important gaps would remain and could be filled only at the statutory level. In 1989, the Commission had adopted the Working Group's recommendation to commence preparation of a uniform law.

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(Mr. Bonnell)

16. At its session in January 1990, the Working Group had discussed some of the possible issues that might be covered in a uniform law on guarantees and stand-by letters of credit. At the close of its session, the Working Group had requested the Secretariat to prepare, for consideration at its next session, a draft set of articles, with possible variations, on the above-mentioned issues as well as a note referring to all other issues that might be included in a uniform law. Since then, the Working Group has held another session, during which it had considered the documentation that it had requested and made progress towards completion of its current mandate as expected by the Commission.

17. The preparation of the draft Model Law on International Credit Transfers, which was part of the current work programme, was in accordance with the commitment undertaken by the Commission at its seventeenth session in 1984 to consider legal problems related to automatic data processing as a priority item in its programme of work. At the 1989 session, the Commission had requested the Secretariat to submit to it in 1990 a study on the legal issues arising in the formation of international commercial contracts by electronic means. The request had been made because there was no international legal régime for that important and rapidly growing practice and since work in that area could help fill a legal vacuum and reduce the uncertainties and difficulties encountered in practice.

18. The report submitted at the twenty-third session by the Secretariat (A/CN.9/333) showed that the concerns expressed in the Commission were shared by other forums - national, regional and sectoral. The proper ways to overcome them, however, were still unclear. Accordingly, UNCITRAL had accepted the Secretariat's recommendation that it should continue its examination of the legal issues in the hope that, on the basis of its report to the twenty-fourth session, the Commission would be able to decide on the type of work to be undertaken in the field.

19. Since the previous report (A/44/17), the international community had increasingly accepted the legal texts prepared by the Commission. That was particularly true with regard to the United Nations Convention on Contracts for the International Sale of Goods, which nine additional States had adopted (Bulgaria, the Byelorussian Soviet Socialist Republic, Chile, Czechoslovakia, the Federal Republic of Germany, Iraq, Spain, Switzerland and the Ukrainian Soviet Socialist Republic), bringing the total number of States parties to 28. Furthermore the Soviet Union would be depositing its instrument of accession to the Convention in the near future. Czechoslovakia had also acceded to the 1980 Protocol amending the Convention on the Limitation Period in the International Sale of Goods, which brought to seven the number of States parties to the Convention as amended by the Protocol, while four States were parties to the unamended Convention. The Commission hoped that those four States would accede to the Protocol and that additional States would accede to the Convention. With regard to the United Nations Convention on the Carriage of Goods by Sea (the "Hamburg Rules"), three States had acceded to the Convention, thereby reducing to three the number of additional States that must ratify or accede to the Convention for it to enter into force. It was increasingly obvious that its entry into force was only a matter of time. That was all the more important since a number of other States hoped to ratify the Convention once it came into force. Lastly, Canada, the Union of Soviet

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Socialist Republics and the United States of America had signed the United Nations Convention on International Bills of Exchange and International Promissory Notes. Its speedy entry into force would depend on the ratification of the Convention by those States and prompt accession by other States.

20. The promotion of UNCITRAL as an institution and of the legal texts it produced was essential to ensure the adoption of those texts by large numbers of States. The Commission realized that the quality of their preparation and the importance of the subject-matter were not sufficient to guarantee their adoption. While both the Commission and individual members participated actively in such promotion activites, the Secretariat certainly carried the primary burden. Since 1987, the Secretariat had developed an expanded programme which was being carried out mainly in the developing countries through the Commission's programme of training and assistance. As a result of the seminars organized by the Secretariat and the latter's participation in meetings organized by other organizations, there had been a steady increase in the number of adoptions of legal texts prepared by UNCITRAL. At the same time, the Secretariat was receiving an increasing number of requests for technical assistance and for regional and national seminars. That posed some problems in view of the resources available, but in the long term additional adoptions by States of texts prepared by UNCITRAL could be expected.

21. The first seminar, held at New Delhi in October 1989 and hosted by the Indian Council of Arbitration, had been sponsored by the Asian-African Legal Consultative Committee (AALCC), UNCITRAL, UNCTAD and the International Institute for the Unification of Private Law. It has been organized for the particular benefit of the Asian States members of AALCC, but there had also been many participants from the Indian Council of Arbitration. While AALCC had made all the local arrangements, UNCITRAL had paid the travel costs of some of the participants, as well as some of the administrative costs. Lectures had been given by members of the secretariats of the three organizations sponsoring the seminar.

22. The second seminar on the work of UNCITRAL had been held in Moscow in April 1990 for 21 participants from developing countries. It had been financed from a trust fund established by the Soviet Union with the United Nations Development Programme for the training of individuals from developing countries. The seminar had been hosted by the School of International Private and Civil Law and the School of International Business of the Moscow State Institute for Foreign Relations.

23. The Secretariat had also organized a seminar at Conakry (Guinea) in March. Some 120 participants from the relevant ministries, the university and the private sector had attended. UNCITRAL had requested the Secretariat to organize seminars of that type, which were an effective way of informing a significant number of individuals in a given country of the work of the Commission.

24. In September 1990, the Secretariat had organized a series of one-day seminars on the Hamburg Rules, sponsored also by the Comisión Centroamericana de Transporte Marítimo (COCATRAM).

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25. A seminar was to be held for the 17 francophone States of North and West Africa during the fourth quarter of 1990. A Government in the region had been approached about hosting the seminar. The Secretariat was also holding discussions with the secretariat of the South Pacific Bureau for Economic Co-operation, with a view to sponsoring a seminar in the Pacific region early in 1991. Lastly, UNCITRAL had approved a plan to hold the fourth UNCITRAL Symposium on International Trade Law during the Commission's twenty-fourth session (Vienna, June 1991).

26. With all those activities, both past and planned, the Commission's programme of training and assistance had been vastly expanded. That programme required considerable resources. As far as human resources were concerned, the greatest butden fell on the Secretariat, despite a reduction in its staff. The financing of seminars posed a problem since no appropriation for them was included in the regular budget. UNCITRAL was therefore grateful to the Soviet Union for having helped to finance the seminar in Moscow through the UNDP/USSR Trust Fund. It had also expressed appreciation to France and Luxembourg, which had contributed to the UNCITRAL Trust Fund for the financing of the seminar to be held in francophone Africa, and to Finland, Canada and Switzerland for having made contributions on a multi-year basis.

27. UNCITRAL once again called on all States to assist it in financing seminars, not only by contributing to the UNCITRAL Trust Fund on a multi-year basis, but also by participating in the financing of one of the seminars currently planned, especially the fourth UNCITRAL symposium (June 1991).

28. He believed that the programme of seminars had helped significantly to make the work of UNCITRAL more widely known and had had an impact on the adoption of the Commission's texts. He therefore asked the members of the Committee to suggest to their Governments that they should contribute to the UNCITRAL Trust Fund for the financing of the seminars.

29. For UNCITRAL, the timing of the United Nations Decade of International Law could not have been better: on 17 December it would mark the adoption by the General Assembly of resolution 2205 (XXI) by which UNCITRAL was created. No one doubted that, during the past 25 years, considerable progress had been made in the development of international trade law. However, so far UNCITRAL had not had an opportunity to step back and evaluate that progress, to see what might have been done that had not been done, and to see what new types of initiatives would be appropriate for the future. The Decade would not only give it an excellent opportunity to carry out that overall evaluation, but would force it to do so, which by itself was a guarantee of success in respect of UNCITRAL and international trade law.

30. The Decade would no doubt provide an opportunity for the world community to reconsider how the rule of law could be strengthened in international affairs. UNCITRAL had not attempted to enter into the debate on the question in its many manifestations, as the Committee would undoubtedly do during the current session. It had, however, concluded, on the basis of its own experience, that, as far as international trade law in particular and perhaps public international law in

(Mr. Bonnell)

general were concerned, the adoption by a greater number of States and the effective implementation of existing texts were often of greater value than the elaboration of new texts. For that reason, it had particularly emphasized the need to develop the teaching, study, dissemination and wider appreciation of international trade law and to promote the acceptance of legal texts emanating from its work and from that of other intergovernmental and non-governmental organizations dealing with international trade law. It had therefore reverted, in the context of the Decade, to the question of the financing of its programme of training and assistance and to the promotion of legal texts; it hoped that the Decade would result in a reduction of the financial problems and thus facilitate its promotion activities. However, at the international level, all that could be done was to draft legal texts of high quality and promote their adoption. In the final analysis, it was up to each State to decide whether it would take advantage of the opportunities offered to it and it was to be hoped that the Decade would encourage at least a few additional States to adopt and implement the increasing number of international trade law instruments.

31. UNCITRAL had taken up a suggestion made the previous year in the Committee that an attempt should be made to find a way of financing the travel costs of experts from developing countries, and especially from developing countries that were members of UNCITRAL, so that they could attend its sessions and those of its Working Groups; otherwise those countries might find themselves unable, for purely financial reasons, to participate actively in the creation of international trade law.

32. With regard to the preparation of legal texts, UNCITRAL looked upon the Decade as an opportunity to take an inventory of what had been done, of what it had decided in the past not to do and of what new types of initiatives it should undertake. The view had been expressed that it should turn to the preparation of general principles in particular areas of international trade law, in addition to the work it was doing on more detailed rules. It had also suggested that the relationship between the work it was doing at the universal level in the context of the United Nations and that of other organizations engaged in similar work should be studied. In particular, a request had been made that UNCITRAL should consider the problems of universal versus regional unification. Lastly, it had been proposed that UNCITRAL should dedicate one session to a review of developments in the field of international trade law since 1980.

33. At the twenty-third session of UNCITRAL, consideration of the United Nations Decade of International Law had been limited to a general listing of ideas. When it learned more about what the Sixth Committee envisaged for the Decade, he was sure that UNCITRAL would offer more precise suggestions as to how international trade law could be included in it. In addition, he was sure that the Secretariat would use the ideas which had already been expressed as the basis for suggestions as to how UNCITRAL could best benefit from the initiative which the General Assembly had taken in proclaiming the Decade.

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(Mr. Bonnell)

34. The twenty-third session had been one of solid achievement, as had been the period of 25 years since the establishment of UNCITRAL. As it approached its twenty-fifth anniversary, UNCITRAL looked forward to a second 25 years of continued achievement.

35. Mr. VAN DE VELDE (Netherlands) said that the present recodification of his country's patrimonial law had been significantly influenced by the United Nations Convention on Contracts for the International Sale of Goods of 1980, which his country would probably ratify within a very short time. Since the Netherlands was the depositary of The Hague Conventions relating to a Uniform Law on the International Sale of Goods and to a Uniform Law on the Formation of Contracts for the International Sale of Goods, that ratification would be of a certain historic significance.

36. The draft model on international credit transfers which the Working Group on International Payments was preparing was a logical sequel to the Convention on Contracts for the International Sale of Goods. It should be noted that the Commission of the European Communities had expressed great interest in the draft model law. His delegation was confident that the Working Group would be able to resolve the outstanding issues at its next session and submit a text to UNCITRAL at its session in 1991.

37. His delegation also welcomed the convening of a diplomatic conference in 1991 with a view to the adoption of a convention on the liability of operators of transport terminals in international trade.

38. With regard to the draft model law on procurement, his delegation suggested that subparagraphs (b) to (d) of article 28, paragraph 7, dealing with the examination, evaluation and comparison of tenders should be simplified by providing merely that tenders should be evaluated on the basis of objective and quantifiable criteria set forth in the procurement documents.

39. As for the draft uniform law on guarantees and stand-by letters of credit, his delegation had noted with approval the initial contours for a solution to the problem of non-documentary conditions in the essentially independent documentary undertakings which the Working Group on International Contract Practices had agreed on at its fourteenth session.

40. In view of the importance of the UNCITRAL programme of training and assistance, his delegation fully supported the efforts of the Secretariat to secure the financial, staff and administrative support necessary to place the programme on a firm and continuing basis.

41. With regard to the participation of UNCITRAL in the United Nations Decade of International Law, he felt that the wider adoption and effective implementation of existing texts would be of greater value than the elaboration of new texts, as had been suggested. The programme of training and assistance could make a positive contribution to the activities of the Decade in respect of the teaching, study, dissemination and wider appreciation of international law, and, in particular, of international trade law.

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42. Mr. MAHNIC (Yugoslavia) welcomed the general approach taken by the authors of the draft legal guide on drawing up contracts in international counter-trade transactions, who had conceived of it as containing only recommendations on relations specific to that type of transaction, even though they might not have been consistent in applying that principle throughout the entire text of the draft. The scope of application of the draft legal guide should not be limited to the type of transaction that stipulated the obligations of parties in a separate contract since that would exclude many types of counter-trade transactions whose practical importance was not negligible. It would have been logical for future work on the draft legal guide to have been entrusted to the Working Group on the New International Economic Order, but since that Working Group was currently busy, his delegation saw no problem in entrusting the work to the Working Group on International Payments, which was expected to be available in 1991. It was important to complete the work as soon as possible and his delegation welcomed the fact that UNCITRAL intended to present the final text of the draft legal guide at its twenty-fifth session in 1992.

43. With regard to the draft model law on international credit transfers, his delegation hoped that the outstanding issues would be resolved at the following session of the Working Group on International Payments and that the text of the draft model law could be submitted to UNCITRAL at its twenty-fourth session. It was important to find solutions without delay to the new legal problems arising in the field of electronic funds transfers and the formation of contracts by electronic means. However, since those were completely new and delicate questions in a highly technical field and were, moreover, currently being considered within the European Communities and in the United States, his delegation concurred with the decision of UNCITRAL to request the Secretariat to submit a report to it at its twenty-fourth session so as to enable it to decide what work it might undertake in that field.

44. In view of the importance of training and assistance in the field of international trade law, his delegation welcomed the efforts made by the Secretariat to increase the number of seminars and symposia.

45. UNCITRAL should make its own contribution to the United Nations Decade of International Law. One of its priorities in that respect should be the elaboration of legal texts in order to promote the further development of international trade law. It would therefore be useful if the Secretariat were to prepare a study identifying the areas of international trade law which were not regulated satisfactorily or not regulated at all, and if UNCITRAL were to draw up a programme of work on the progressive development of international trade law for the entire Decade.

The meeting rose at 11.40 a.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

SIXTH COMMITTEE
4th meeting
held on
Tuesday, 25 September 1990
at 10 a.m.
New York

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# SUMMARY RECORD OF THE 4th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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AGENDA ITEM 141: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-THIRD SESSION (continued)

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The meeting was called to order at 10.15 a.m.

AGENDA ITEM 141: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-THIRD SESSION (continued) (A/45/17)

1. Mr. NEDELCHEV (Bulgaria) said that the development of stable international trade and economic relations between States on the basis of equality and mutual advantage was becoming an increasingly important factor for the improvement of international co-operation. That was why the building of a substantial legal basis for conducting international trade activities was an important element in strengthening the rule of law in international economic relations. Accordingly, Bulgaria would spare no effort to contribute to the work of the United Nations Commission on International Trade Law (UNCITRAL).

2. His delegation expressed satisfaction at the progress achieved in preparing a draft legal guide on drawing up contracts in international countertrade transactions, which should provide States with a range of contractual solutions to legal problems arising in that type of trade.

3. The draft model law on procurement, which was being elaborated by the Working Group on the New International Economic Order, was a useful instrument for States that wished to develop further their legislation in the field and could, if necessary, incorporate it into their internal law.

4. His delegation was convinced that the Working Group on International Contract Practices would continue to carry out expeditiously its work on the preparation of the uniform law on guarantees and stand-by letters of credit.

5. Having repeatedly underscored the important role of UNCITRAL in the harmonization and unification of international trade law, Bulgaria placed great hope in the conference of plenipotentiaries to be held at Vienna in 1991 for the adoption of the draft convention on the liability of operators of transport terminals in international trade.

6. Lastly, his delegation reaffirmed its readiness to co-operate actively with the Commission in carrying out its programme of work.

7. Mr. DASTIS (Spain) said that his country had always sought to co-operate to the best of its ability with the Commission by participating in its discussions and, as was currently the case, by presiding over one of its working groups. Spain was aware of the importance of the unification and harmonization of international trade law in a world in which the economy was increasingly becoming an instrument of co-operation between interdependent countries but could also, because of that, be a source of conflict and disagreement.

8. Among the Commission's achievements and current activities he drew attention to two areas of work which he considered particularly productive. The first, which consisted in improving instruments of co-operation in trade between countries with

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(Mr. Dastis, Spain)

different levels of development included the draft legal guide on drawing up contracts in international countertrade transactions and the draft Model Law on International Credit Transfers. The practical manner in which UNCITRAL had dealt with those two questions, avoiding any duplication of effort, confirmed his delegation's view that the Commission provided a completely suitable framework for considering problems linked to a new international economic order. It was less a question of codifying major abstract principles than trying to resolve difficulties which arose in the everyday practice of international trade. The work on electronic fund transfers was part of the second area of activity, which his delegation hoped would be speedily expanded to include the drawing up of international contracts by electronic means. That question could be considered by the Working Group on International Contract Practices. In any event, electronic fund transfers demonstrated the difficulties connected with the use of electronic means in trade as well as the inadequacy of traditional solutions.

9. Spain had recently deposited its instruments of accession to the United Nations Convention on Contracts for the International Sale of Goods and should soon do the same with regard to the United Nations Convention on International Bills of Exchange and International Promissory Notes.

10. With respect to the United Nations Decade of International Law, Spain believed that the objectives set for international trade law were in keeping with those laid down for the Decade in general. The widespread application of existing texts was more useful than the elaboration of new texts in areas where a sufficient consensus did not yet exist. Accordingly, Spain hoped that the Commission would redouble its efforts in the field of training and promoting the spread of international trade law.

11. Lastly, his delegation expressed satisfaction at the efforts by the Secretariat to make it possible to publish the Yearbook of UNCITRAL in the near future.

12. Mr. BELLO-FADILE (Nigeria) said that his country fully recognized the importance of the mandate of UNCITRAL, which had the task of co-ordinating legal activities in order to avoid duplication of effort and promote efficiency and coherence in the progressive development and harmonization of international trade law. To date, the Commission had carried out those functions in a commendable manner, as demonstrated by the various multilateral conventions that it had drawn up as well as the numerous seminars and symposia that it had organized.

13. The draft convention on the liability of operators of transport terminals in international trade filled a major gap because existing rules did not cover loss while goods were in terminals. Accordingly, his delegation reaffirmed its support for the conference of plenipotentiaries, which was to adopt the convention in Vienna in 1991.

14. Nigeria placed great hopes in the draft legal guide on drawing up contracts in international countertrade transactions. It was the urgent task of both debtor and

(Mr. Bello-Fadile, Nigeria)

creditor countries to tackle the problems of debt and the negative transfer of resources from the developing to the developed countries.

15. Recent developments in Eastern Europe and the progress made towards the unification of Western Europe should pave the way for a liberalization of trade which would be advantageous for both the developed and the developing countries. Likewise, as experience had confirmed, any negative impulse in the international economy, in particular with respect to terms of trade, would have dire consequences for all, including the creditor countries. It was therefore necessary to leave no stone unturned in the drafting of the rules which should regulate international economic transactions. For its part, Nigeria was ready to contribute to those efforts.

16. Ms. LI Yanduan (China) said that, since countertrade was a means for the developing countries to alleviate their current difficulties - such as their lack of hard currency - in international trade, where they were not very competitive, a practical legal guide based on the experiences of various countries should be prepared to assist countries which engaged in that type of trade, in particular developing countries.

17. With respect to the draft legal guide on drawing up contracts in international countertrade transactions, China believed that, in carrying out countertrade, the parties should be firmly committed to conclude a countertrade contract instead of relying on a declaration of intent, and each side should provide the other with mutual guarantees. Moreover, the equality of rights and obligations of the two parties should be stipulated in order to avoid situations in which the interests of one party were damaged as a result of the refusal by the other party to honour its counter-purchase obligations. As for methods of payment, it was important, in order to ensure that both contracts were carried out, to avoid as far as possible separate payments and to adopt "linked payment" mechanisms. The legal guide should contain an in-depth analysis of possible financial costs which might ensue from the adoption of linked payment mechanisms, in order to enable the parties concerned to choose the most appropriate method of payment for their operations. The number of model provisions in countertrade contracts should be increased in order to guide those who engaged in that type of trade.

18. In short, her delegation believed that the formulation of a legal guide was absolutely necessary to assist States in their countertrade transactions and, especially, to help parties to trade agreements to spell out, during the negotiations, what their counter-purchase obligations were. Such a guide would help promote the development of countertrade, and her delegation looked forward to its early completion.

19. With regard to training and assistance, China believed, judging by what had already been accomplished, that more attention should be given to the interests of, and training opportunities for, developing countries.

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(Ms. Li Yanduan, China)

20. With respect to the co-ordination of the activities of UNCITRAL and the United Nations Decade of International Law, her delegation was of the view that international trade law was an important branch of international law, and UNCITRAL should make its contribution to the Decade. She therefore proposed that the Secretariat should draw up a detailed plan relating to the legislation, training and publicity work for all States to refer to.

21. China was currently carrying out a radical programme of economic reforms and modernization which was aimed at opening China to the outside world and promoting and expanding its economic and trade relations with other countries. China was also considering acceding to relevant international conventions, and it was carrying out its trade activities with other countries in accordance with international practice. In that regard, her delegation had always attached great importance to the work of UNCITRAL, in which it placed high hopes.

22. Mr. VERENIKIM (Union of Soviet Socialist Republics) said that the principal result of UNCITRAL's work at its twenty-third session had been its initiation of work on the drafting of a legal guide on drawing up contracts in international countertrade transactions, which was intended to be a universally applicable document for assisting countertrade partners in resolving legal problems connected with the conclusion of the contracts. The difficulties in that area were particularly great for States which might wish to establish trade ties with countries which, lacking foreign currency, were obliged, more often than other countries, to engage in countertrade. His delegation welcomed the progress made by UNCITRAL in its drafting of the first chapters of the legal guide and hoped that the Commission would be able to consider the final text at its twenty-fifth session, in 1992.

23. His delegation was also pleased with the discussion on the contribution of UNCITRAL to the United Nations Decade for International Law, which had taken place at UNCITRAL's twenty-third session. UNCITRAL could make a contribution by drawing up new legal texts to promote the development of international trade law and encourage wider accession to existing instruments. It could also make a useful contribution to the development of trade ties between States and to the establishment of a new and just international economic order founded on values common to mankind and to all legal systems.

24. Mr. HANAFI (Egypt), said that, as usual, UNCITRAL had achieved admirable progress in carrying out its task, as evidenced by its report on the work of its twenty-third session.

25. Concerning the question of international countertrade, his delegation was pleased to note that there was general agreement with the overall approach taken by the Secretariat in the draft chapters, both as to the structure of the legal guide and as to the nature of the description and advice contained therein.

26. Concerning international payments, his delegation hoped that the Working Group on International Payments would be able to resolve the outstanding issues and present a draft text to UNCITRAL at its twenty-fourth session in 1991.

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(Mr. Hanafi, Egypt)

27. His delegation welcomed the progress already achieved in elaborating the model law on procurement and hoped that the draft would be completed at the earliest possible date.

28. With respect to the increase in the membership of the working groups, his delegation wished to reiterate the desirability of inviting all States to participate in the work of the working groups and of UNCITRAL, as members or observers. That would attest to UNCITRAL's interest in having Member States participate in all phases of its work, particularly at the preliminary stage. That policy, which had been pursued thus far, was responsible for the effectiveness of the Commission's work, as clearly shown by its report on the work of its twenty-third session.

29. Mr. MOLNAR (Hungary) said that his delegation favoured the preparation of a legal guide on elaborating international countertrade contracts. It supported the overall approach taken in that regard by the UNCITRAL secretariat in the draft chapters and hoped that the final text would be submitted to the Commission at its twenty-fifth session.

30. Since electronic data interchange was more and more widespread in world markets, his delegation welcomed the efforts of the UNCITRAL secretariat to fill the legal vacuum existing in the field and reduce the uncertainties and difficulties encountered in practice by examining the legal questions related to the formation of international contracts by electronic means. It hoped that that examination would lead to the elaboration of legal rules in the area.

31. It was his delegation's understanding that the model law on international credit transfers would be the main subject of discussion at the Commission's 1991 session. He trusted that the Working Group on International Payments would be able to resolve the outstanding problems by that time so that the text of the model law could be submitted to UNCITRAL.

32. His delegation was satisfied with the positive results obtained by UNCITRAL in the area of training and assistance. It supported the efforts by the Commission's secretariat to carry out an extensive programme of activities aimed at making the achievements of the Commission more widely known.

33. Concerning the status of conventions, his delegation noted with satisfaction that, since 1989, the number of States parties to instruments elaborated by UNCITRAL had increased significantly. It reiterated its invitation to those States which had not yet done so to ratify or accede to the instruments in question.

34. In conclusion, his delegation was fully satisfied with the progress achieved by UNCITRAL in various other areas and hoped that the United Nations Decade of International Law would provide an opportunity for UNCITRAL to strengthen its programme of work in order to achieve its goals. His country was prepared, as a member of UNCITRAL, to participate in the efforts made within the framework of the United Nations to harmonize and unify the principles and norms of international trade law.

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35. Mr. GILL (India) noted that UNCITRAL had contributed, through its excellent work, to the progressive harmonization and unification of international trade law, as evidenced by the various conventions it had elaborated, including the 1974 Convention on the Limitation Period in the International Sale of Goods, the 1978 United Nations Convention on the Carriage of Goods by Sea, the 1980 Convention on Contracts for the International Sale of Goods, the 1985 Model Law on International Commercial Arbitration and the 1988 United Nations Convention on International Bills of Exchange and International Promissory Notes. His delegation also noted that the Commission had approved the draft convention on the liability of operators of transport terminals in international trade and recommended that the General Assembly should convene an international conference of plenipotentiaries at Vienna for its adoption. That Convention was designed to fill the gaps in current international transport law by establishing the financial liability of transport terminal operators, including their liability for loss caused by dangerous goods, and by attempting to achieve a balance of interests between the contracting parties.

36. His delegation was pleased to hear that during UNCITRAL's twenty-third session it had examined the first seven chapters of the draft legal guide on drawing up contracts in international countertrade, prepared by its secretariat. Countertrade was very important to developing countries in view of their meagre and dwindling foreign exchange reserves. The guide was not intended to be a normative code, but should provide an analysis of legal problems related to international countertrade contracts, propose solutions and indicate the implications of the various solutions.

37. His delegation also appreciated the fact that the Commission had considered and approved the reports of the nineteenth and twentieth sessions of the Working Group on International Payments, which had been engaged in drafting a model law on international credit transfers, both electronic and paper-based. The report would also deal with the duties of the parties to the transfer, and the responsibilities in the event of error, delay or failed transfers. The Commission had also considered and approved the report of the Working Group on International Contract Practices, currently engaged in drafting a uniform law on guarantees and stand-by letters of credit, which was intended to eliminate the disparities between different legal systems, and would focus on issues such as validity and enforceability, time of effectiveness and expiry, liability of the parties and objections to payments. His delegation was also pleased to see that the Working Group on the New International Economic Order had begun a draft of a model procurement law, intended to help both developed and developing countries in restructuring or improving their relevant laws and procedures.

38. His delegation supported the Commission's decision to defer a possible increase in its membership. It also supported the Commission's observation that the programme for the United Nations Decade of International Law should take account of the fact that international trade law was an important and integral part of international law, and in particular was an important element in strengthening the rule of law in international economic relations. His delegation was happy to note that the Commission had identified several types of activity for inclusion in the programme for the Decade, with the objectives of promoting the teaching, study

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(Mr. Gill, India)

and dissemination of international law and of promoting the acceptance of legal texts emanating from the work of the Commission and of other international organizations.

39. His delegation was pleased to note that the Commission was co-ordinating its work with those of other international organizations in general and with those of the Asian-African Legal Consultative Committee in particular, as exemplified by the organization of a seminar in New Delhi jointly with that Committee, with UNCTAD and with the International Institute for the Unification of Private Law (UNIDROIT).

40. His delegation once again reaffirmed its support for the Commission's programme of training and assistance, funded by annual voluntary contributions to the relevant trust fund. It mentioned in particular that the UNCITRAL Symposium on International Trade Law was of great use to lawyers and government officials from developing countries, and offered its congratulations to the Commission for its efforts in this area.

41. Mr. ABRAHAMSEN (Denmark), speaking on behalf of the five Nordic countries (Finland, Iceland, Norway, Sweden and Denmark) expressed those countries' satisfaction with the work of UNCITRAL, in which they took an active part. They had been particularly interested in the work of the Working Group on International Payments with regard to the preparation of a model law on international credit transfers, which was of great importance to banking practice and also touched upon the more general problems of the impact of modern technology on contract law. Of the instruments drawn up by UNCITRAL, the 1980 Convention on Contracts for the International Sale of Goods had been particularly welcomed by the Nordic countries, and was now in force in Denmark, Finland, Norway and Sweden.

42. The Nordic countries were looking forward to the results of the International Conference of Plenipotentiaries to be held in Vienna in April 1991, at which the Convention on the Liability of Operators of Transport Terminals in International Trade, prepared by the Working Group on International Contract Practices, would be adopted. The success of the Conference appeared assured. The Nordic countries were also looking forward to the results of the work of the other working groups.

43. The Nordic countries were confident that UNCITRAL would be able to contribute effectively to the United Nations Decade of International Law, especially with regard to the teaching, study, dissemination and wider appreciation of international trade law. In view of the increasing importance of international trade in the years to come, and of the scarce resources at UNCITRAL's disposal to resolve the numerous problems arising out of that trend, the Nordic countries felt that the Commission should make recommendations as to which new topics it should take up.

The meeting rose at 11.15 a.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

SIXTH COMMITTEE
5th meeting
held on
Tuesday, 25 September 1989
at 3 p.m.
New York

# SUMMARY RECORD OF THE 5th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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AGENDA ITEM 137: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES

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3 October 1990
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The meeting was called to order at 3.15 p.m.

AGENDA ITEM 141: REPORT OF THE UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW ON THE WORK OF ITS TWENTY-THIRD SESSION (*continued*) (A/45/17)

1. Mr. DELON (France) said that his delegation commended the quality of the draft legal guide on drawing up international countertrade contracts, which was a perfect complement to that being prepared within the Economic Commission for Europe.

2. Satisfactory progress was being made by the working groups established by UNCITRAL both in the fields of international payments and the new international economic order, particularly in the preparation of a text on procurement. With regard to legal problems of electronic data interchange, the Secretariat should complete an in-depth analysis before the convening of the twenty-fourth session of UNCITRAL.

3. He was pleased to note that the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980) had already been ratified by 29 States.

4. Lastly, he emphasized the usefulness and importance of the training activities carried out by UNCITRAL with the financial support and expertise of some Member States, including France, which had contributed to the seminar for the francophone States of North and West Africa.

5. Mr. DROUSHIOTIS (Cyprus), said that at its twenty-third session UNCITRAL had devoted a large part of its work to the topic of international countertrade, which had been dealt with by the Working Group on the New International Economic Order. It was a subject of increasing significance, particularly for the developing countries. His delegation welcomed the progress that had been made and agreed that the preparation of the legal guide on drawing up international countertrade contracts should be entrusted to the Working Group on International Payments. It was to be hoped that the Working Group would submit the final text of the guide to UNCITRAL at its twenty-fifth session, to be held in 1992.

6. UNCITRAL had before it a report of the Working Group on International Payments, which was preparing a draft model law on international credit transfers. It was to be hoped that the Working Group would be able to resolve the outstanding issues and prepare a final text for consideration by UNCITRAL at its next session. He wished to underline once again the significance of the topic of electronic funds transfers and the valuable contribution which a model law would make in that new field.

7. His delegation took note of the work which had been done to date by the Working Group on the New International Economic Order with regard to procurement and expressed the hope that the work would proceed expeditiously.

8. The co-ordinating role of UNCITAL was an essential element in the unification and harmonization of international trade law. His delegation took note of the Secretary-General's report.

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(Mr. Droushiotis, Cyprus)

9. He noted the fruitful co-operation between UNCITRAL and the Asian-African Legal Consultative Committee, of which Cyprus was a member.

10. The increasing acceptance by the international community of the legal texts prepared by UNCITRAL was cause for satisfaction. He also reaffirmed the importance, particularly for the developing countries, of the work being done by UNCITRAL in training and assistance. His delegation expressed its appreciation to those countries which had hosted seminars and symposia and to those which had made financial contributions to them.

11. Cyprus was closely associated with the United Nations Decade of International Law, which had been initiated by the Ministerial Conference of the Non-Aligned Countries, held at Nicosia in September 1989. International trade law was an important and integral part of international law and UNCITRAL was an important element in strengthening the rule of law in international economic relations.

12. Mr. TREVES (Italy), referring first to the draft legal guide on drawing up contracts in international trade transactions, said that the main precedent was another product of the work of UNCITRAL: the draft legal guide on drawing up contracts for the construction of industrial works. Those instruments were extremely helpful to legal practice, especially in making the developing countries and their enterprises aware of the legal difficulties and possibilities that existed in various fields of international law. Italy was not particularly in favour of countertrade as a means of conducting international trade and shared the reservations expressed in paragraph 2 of Annex I to the report (A/45/17) regarding the inefficient character of countertrade, but it was fully aware of the delicate legal problems involved and looked forward to the completion of the work on the legal guide.

13. The efforts made by UNCITRAL, through its Working Group on International Payments, to explore the legal problems and consequences of the use of electronic means in international trade were commendable. It was a very new area and a promising one for an approach aiming at promoting common rules and practices, without necessarily imposing solutions that had been elaborated in more technologically advanced countries on those States which were less familiar with the new technology.

14. The United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), which had been ratified by almost 30 States, had become a major instrument of international trade law. The uniform interpretation of the Convention by the courts of law of the States parties to it would be crucial to the attainment of its objectives.

15. His delegation was happy to note that the Commission's activities in the field of training and assistance were progressing and expanding. Those activities, together with activities relating to the promotion of the acceptance of the legal instruments elaborated by UNCITRAL, should form the most important part of the Commission's contribution to the United Nations Decade of International Law.

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(Mr. Treves, Italy)

16. With regard to the Decade, the strengthening of the rule of law in international economic relations strengthened the fabric of international society and was an essential element for reducing tension and establishing world peace. Consideration should be given to the possibility of elaborating general principles of contract law.

17. Italy looked forward to the convening in 1991 of the Conference on the liability of operators of transport terminals, which would bring to completion another successful initiative of UNCITRAL.

18. Mr. BELLOUKI (Morocco), said that the Commission had, at its twenty-third session, considered questions which almost all warranted priority treatment.

19. With respect to the draft legal guide on drawing up international countertrade contracts, the legal problems must be analysed objectively. He expressed satisfaction that preparation of the draft chapters of the guide was sufficiently advanced for them to be submitted for consideration by a working group.

20. The draft model law on international credit transfers, which was designed in particular to regulate electronic funds transfers, was of great importance for the speedy processing of international payments. Assistance should be provided to the developing countries in order to facilitate their incorporation into such a system of transfers.

21. The same was true for electronic data interchange, which should be sufficiently comprehensive to involve all participants in international trade. It was to be hoped that the new report to be prepared by the Secretariat would reflect the emergence of a universally valid model agreement.

22. The progress made so far on the draft model law on procurement aroused hopes for the establishment of an appropriate legal framework, which must include a sufficiently flexible procedure for the settlement of disputes. Progress in connection with the draft uniform law on guarantees and stand-by letters of credit was also satisfactory.

23. Priority should continue to be given to training and assistance activities. The diffusion of international trade law and underscoring, for civil servants in the developing countries, of the importance for the stability of international trade of rules drawn up by UNCITRAL, could prepare the ground for the adoption of balanced and universally valid texts.

24. His country accorded particular importance to the seminar for the francophone States of North and West Africa, due to be held in the fourth quarter of 1990, and expressed its gratitude to those countries which contributed to the funding and organization of seminars and conferences on the Commission's activities.

25. His country was a party to most of the conventions prepared by UNCITRAL and had begun procedures to accede to those other conventions which were a result of

(Mr. Bellouki, Morocco)

its work. The draft Convention on the liability of operators of transport terminals in international trade, prepared under the auspices of UNCITRAL and due to be adopted at the conference in 1991, filled a legal gap in an important area of international trade.

26. With respect to the composition of UNCITRAL working groups, States members of the Commission should also be members of the working groups, in such a way that organizations and countries with observer status could also make their contributions to the groups' work. The United Nations Decade of International Law provided an opportunity for the widest possible diffusion of international trade law and the promotion of universal application of the international instruments adopted under the Commission's auspices.

27. Mr. HUNJA (Kenya) praised the United Nations Commission on International Trade Law (UNCITRAL), describing it as a unique body in the United Nations system which had rapidly produced high-quality legal texts, as well as its secretariat, headed by Mr. Bergsten.

28. It was to be hoped that the Commission would in 1992 be able to adopt the draft legal guide on drawing up international countertrade contracts.

29. When the General Assembly established the Commission, by resolution 2205 (XXI) of 17 December 1966, it stated that particular attention should be devoted to the interests of the developing countries. It probably did so because, in most areas of the Commission's work, international instruments already existed without the developing countries having played any role in their elaboration. Unfortunately, those countries had still not actively participated in the work of the Commission. In most cases, failure to participate was due to the high costs involved, and his delegation therefore reiterated the proposal, already made twice in the past, whereby developing countries should be provided with assistance for the purpose of attending UNCITRAL meetings and urged that the resolution relating to the agenda item under consideration should include a request for the UNCITRAL secretariat to submit a report to the Commission at its twenty-fourth session on the whole range of possibilities by which the question might be resolved, bearing in mind the practice of other United Nations bodies such as the Committee for Programme and Co-ordination.

30. He had particularly appreciated, when taking part in the seminar held in Lesotho in 1988, the high quality of efforts undertaken by the UNCITRAL secretariat to ensure the diffusion and better appreciation of the Commission's work and the ensuing benefits for those taking part. It was to be hoped that those efforts would be reciprocated by wider acceptance of UNCITRAL texts.

31. Ms. RAUSCHER (Austria) said that the importance of UNCITRAL's work was more than ever evident in a world in which interdependence was very rapidly attaining an unprecedented level of intensity, particularly in the area of trade. The Commission's contribution to the harmonization of trade law and its consequent facilitation of international trade, as well as its efforts to promote co-ordination between the activities of the various international organizations

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(Ms. Rauscher, Austria)

concerned with the unification of international trade law, were most valuable. The admirable and dedicated support provided by its secretariat was particularly appreciated.

32. In preparing the draft legal guide on drawing up contracts in international countertrade contracts, account should be taken of similar work being undertaken by other organizations of the United Nations system and attention should be concentrated on an analysis of the legal issues raised by such transactions rather than on the formulation of rules and instructions to be followed in drawing up contracts. In that context, consideration should be given to the extent to which the United Nations Convention on Contracts for the International Sale of Goods would be applicable.

33. In view of the increasing importance of international credit transfers, especially by electronic means, it was desirable that a pertinent model law should be elaborated. Her delegation noted with satisfaction that the Working Group on International Payments would continue its efforts in that direction and hoped that a text could be submitted to the Commission in the near future.

34. Progress made on the formulation of a model law on procurement, avoiding any duplication of the work on government procurement being undertaken within the General Agreement on Tariffs and Trade (GATT), was of great interest. It was to be hoped that the same approach would be maintained in the future.

35. Uniform legislation was urgently required in the area of guarantees and stand-by letters of credit. It was therefore a source of satisfaction to note that the Working Group on International Contract Practices was already preparing a first draft set of articles towards the elaboration of a uniform law in that respect.

36. Her delegation noted that the preliminary study of legal issues related to the formation of contracts by electronic means, which was considered by the Commission at its twenty-third session, summarized work that had been undertaken in the European Communities and in the United States.

37. Training and assistance in the field of international law should be given high priority in order to promote awareness of existing legal documents, disseminate information and provide assistance in their implementation as required. Her delegation wished to express its appreciation of the extensive programme of seminars organized by the UNCITRAL secretariat in various parts of the world during the preceding 12 months which had been tailored to the specific needs of participants. The seminars were essential to the promotion of international trade law harmonization.

38. Her delegation attached great importance to the valuable work which UNCITRAL carried out with a high level of professionalism, despite financial constraints.

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39. Mr. BERG (Federal Republic of Germany) said that UNCITRAL was one of the most effective and competent bodies of the United Nations and enjoyed great prestige, as was manifested by the large number of observers that participated in its work.

40. While international countertrade transactions were not an ideal basis for world trade, there were in many cases practical constraints which forced many States to resort to them in order to participate in that trade. In those cases, the draft legal guide UNCITRAL was preparing could be a useful instrument that would facilitate and simplify the drawing up of such contracts. The legal guide, while not an international convention or a model law, would contribute to the normalization of international law through the standardization of contracts. His delegation would continue to participate actively in its drafting and in the deliberations of UNCITRAL Working Groups relating to the drafting of a model law on procurement and a uniform law on guarantees and stand-by letters of credit and to the legal problems of electronic data interchange.

41. In view of the vast sums of money being moved daily through the international banking system, the deliberations of the Working Group on International Payments were extremely important. It was to be hoped that the draft Model Law on International Credit Transfers, in the elaboration of which his delegation was actively involved, could be completed in 1991 as planned.

42. His country had recently ratified the United Nations Convention on Contracts for the International Sale of Goods, which had also been ratified by a number of other States. It was to be hoped that that important instrument would gain wide acceptance in the years to come.

43. UNCITRAL participation in the United Nations Decade of International Law was extremely important. International trade law was an important part of international law. The standardization of trade law made it possible to intensify and improve international trade relations, which, when prosperous, constituted a sound basis for international relations in general. UNCITRAL could contribute to the Decade by organizing international seminars and study programmes to further the dissemination and knowledge of its work.

44. He voiced the hope that the important activities scheduled for 1991 would be successful, particularly the conference that would consider the draft convention on the liability of operators of transport terminals in international trade, to be held at Vienna in April, and the deliberations on the draft Model Law on International Credit Transfers.

45. For the Federal Republic of Germany, the development of international trade law was of vital interest. Increasing interdependence and trade between countries with quite different legal systems pointed up the importance of harmonizing international trade law. UNCITRAL, whose work in that field was extremely valuable, had the full support of his delegation.

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46. Mr. TETU (Canada) said that his country was pleased to be a member of UNCITRAL and participated actively in its work, since the Commission was one of the most fruitful United Nations bodies and had achieved important results, for which its members were to be congratulated, as was its secretariat, headed by Mr. Bergsten. It was to be hoped that the conference on the liability of operators of transport terminals in international trade would add yet another success to the long list of legal instruments drafted by UNCITRAL.

47. Canada, the first State to sign the United Nations Convention on International Bills of Exchange and International Promissory Notes, was pleased to note that the United States of America and the Soviet Union had also signed it; his delegation hoped that many other States would soon become parties to the Convention, which was the product of many years of work by experts in the field and contributed to the harmonization of law in that area.

48. He welcomed the steady increase in the number of States parties to the United Nations Convention on Contracts for the International Sale of Goods. As Canada hoped to accede to that instrument in the coming year, it was fortunate that the Convention contained a clause on territorial units of federal States, since Canada consisted of 13 different jurisdictions, each of which had legislative authority in that matter.

49. It should be noted that considerable progress had been made by the Working Group on International Payments on the drafting of a model law on international credit transfers. It was to be hoped that the Working Group would be able to resolve differences of opinion at its session in December 1990 so that UNCITRAL could consider the draft in 1991.

50. He welcomed the progress made in the drafting of a uniform law on guarantees and stand-by letters of credit, a model law on procurement and the draft legal guide on drawing up contracts in international countertrade transactions. The instrument that would result from the work done in those areas would constitute a substantive contribution to the harmonization of international trade law.

51. The efforts of UNCITRAL to organize symposiums on international trade law was commendable. Canada, which was pleased to contribute to the UNCITRAL Trust Fund for symposiums on that subject, was prepared to make a special contribution for the seminar on international trade law planned for French-speaking African countries under the auspices of the Agency for Cultural and Technical Co-operation, once that organization decided to sponsor the seminar as part of its programme of international legal co-operation.

52. He welcomed the fact that UNCITRAL had begun to look at activities it might undertake as part of the United Nations Decade of International Law. Canada was convinced that UNCITRAL must continue to play a key role in the development of international trade law, especially during the Decade.

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53. Mr. RANKIN (United Kingdom) said that, like other delegations, his delegation was particularly concerned that the Commission should give priority to consideration of the legal problems of electronic data interchange and looked forward to receiving the new study to be prepared on that subject by the secretariat.

54. With regard to the Conventions adopted by UNCITRAL, the United Kingdom, which, the year before, had reported to the Sixth Committee on the outcome of its detailed examination of the Model Law on International Commercial Arbitration, had completed wide-ranging consultations on the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on International Bills of Exchange and International Promissory Notes. His Government hoped, within a few months, to be in a position to take a decision on accession to the two Conventions. As far as the Hamburg Rules were concerned, the most satisfactory course would be to retain the Hague Visby Rules as the legal basis for the carriage of goods by sea.

55. Lastly, he fully supported the views expressed by members of the Commission in relation to the United Nations Decade of International Law. Given the role to be played by UNCITRAL in the Decade, his delegation looked forward to receiving the secretariat's proposals on the matter.

56. Mr. ABDUL NASIER (Indonesia) said that, since its establishment, UNCITRAL had made a valuable contribution to the unification and establishment of a body of laws for the development of international trade and economic relations among nations. Accordingly, Indonesia welcomed the decision by UNCITRAL to prepare a legal guide on drawing up international countertrade contracts. The Commission's efforts to formulate draft rules for the legal guide pertaining to scope and terminology, contracting approach, drafting, quality and quantity of goods, pricing of goods, and security for performance constituted an important achievement in view of the importance of international countertrade, particularly for developing countries. Attainment of the many objectives of countertrade transactions was especially useful in the development of international trade, particularly when the safeguarding of foreign exchange reserves and lessening of debt burdens were deemed essential if developing countries were to stimulate their industrial development and gain access to wider markets. In that regard, Indonesia's counterpurchase programme had aroused great interest among developing countries and, in the view of many, could serve as a model for other countries.

57. As indicated by the Commission, the legal guide should provide an analysis of legal issues arising in international countertrade transactions and give guidance concerning possible contractual solutions and their implications rather than formulating rules and instructions to be followed in countertrade transactions.

58. With regard to electronic funds transfers, his delegation was certain that, despite the complexity of the issues still outstanding, UNCITRAL would submit a final text of the draft Model Law on International Credit Transfers at its following session.

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(Mr. Abdul Nasier, Indonesia)

59. At its nineteenth session, held in 1986, the Commission had recognized the need to accord priority to the draft model law on procurement, which necessitated devising legal rules and procedures of great importance to the economic development of developing countries. In that regard his delegation appreciated the Commission's efforts in the draft model law to regulate the role of private companies.

60. His delegation found it encouraging that UNCITRAL had given priority to the study of legal issues related to the formation of contracts by electronic means. The Secretariat's report on developments in other organizations in the field of electronic data interchange and model communication agreements would be particularly useful for many countries. His delegation also appreciated the continued efforts to establish a uniform law on guarantees and stand-by letters of credit.

61. He stressed the importance of the role of the Commission in strengthening the rule of law in international economic relations, in accordance with the provisions of General Assembly resolution 44/23, of 17 November 1989, which declared the period 1990-1999 as the United Nations Decade of International Law. There was universal recognition that the Decade represented a unique opportunity for UNCITRAL to concentrate on encouraging the teaching, study, dissemination and wider appreciation of international law. Accordingly, his delegation welcomed the Commission's decision to undertake activities intended to further develop the international legal régime, which, in turn, would encourage international trade flows.

62. With regard to training and assistance activities, he was gratified to note that UNCITRAL would continue its endeavours to devise expanded programmes of seminars and symposia. His delegation also commended the secretariat for its efforts to hold further seminars in developing countries in different regions of the world.

63. Mr. TOMKA (Czechoslovakia), referring to international countertrade, said that his delegation supported UNCITRAL's endeavours to prepare a legal guide on drawing up international countertrade contracts, endeavours which should offer an analysis of the legal issues raised by international countertrade transactions and indicate possible solutions and their implications. The guide should not, however, promote the conclusion of such contracts, since they did not correspond to the concept of free competition in international markets.

64. His delegation was following the work on international payments very carefully and trusted that UNCITRAL and the Working Group would soon conclude their preparation of rules that would facilitate the dissemination of modern means of payments.

65. His delegation was gratified by the progress made on the preparation of a model law on procurement, which would regulate guarantees and stand-by letters of credit.

(Mr. Tomka, Czechoslovakia)

66. With respect to the legal problems of electronic data interchange, he trusted that UNCITRAL would adopt a decision on the development of its work in that area at its following session, which would promote the conditions needed for legal certainty.

67. During the year Czechoslovakia had ratified the United Nations Convention on Contracts for the International Sale of Goods, of 1980, and had acceded to the Protocol amending the Convention on the Limitation Period in the International Sale of Goods, of 1979. Czechoslovakia had thus become party to three of the instruments prepared by UNCITRAL.

68. He commended the work performed by UNCITRAL and its secretariat to disseminate international trade law. In that connection, and in view of the fact that Czechoslovakia was converting to a market economy, the conclusion of trade agreements with other countries would be intensified, which would require an awareness on the part of Czechoslovak jurists of UNCITRAL's work. Accordingly, he welcomed the Commission's intention to organize the fourth UNCITRAL Symposium on International Trade Law at Vienna on the occasion of the twenty-fourth session of the Commission, to be held in 1991.

69. Ms. WILLSON (United States of America) said that at its twenty-third session, UNCITRAL had made proposals for modifications to the text of those chapters of the legal guide on drawing up countertrade contracts that would help the guide better to define and cover certain issues. Her delegation looked forward to receiving the further draft chapters of the guide and the review thereafter of the entire guide by a UNCITRAL working group.

70. Other UNCITRAL working groups were continuing their work on a model law on international credit transfers (formerly called electronic funds transfers) and a model law on international guarantees and stand-by letters of credit. She hoped that certain hurdles would be successfully overcome, consistent with the spirit that UNCITRAL member States had always demonstrated with regard to its work.

71. Her delegation was also looking forward to the United Nations Conference on the Liability of Operators of Transport Terminals in International Trade, which was now firmly scheduled for 2-19 April 1991 in Vienna, and its written comments on the draft Convention contained in document A/CONF.152/5 would be submitted to the UNCITRAL secretariat by about the 30 September deadline.

72. Her delegation was also pleased that at its plenary session earlier in 1990, UNCITRAL had requested the secretariat to continue its examination of the legal issues related to the formation of contracts by electronic means and to prepare a further report with regard to electronic data interchange. She believed that the final decision that UNCITRAL has to adopt at its next session on its work in that sphere would give it the opportunity to make clear that it meant to be involved from the beginning in international efforts to facilitate new methods of trade, which were changing so rapidly in the electronic age.

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(Ms. Willson, United States)

73. In 1989, the organized bar in the United States had endorsed two United Nations conventions prepared by UNCITRAL. The State Department expected to send forward to the Senate the 1974 Convention on the Limitation Period in the International Sale of Goods and the 1980 Additional Protocol, for the Senate's advice and consent to United States accession thereto. It also expected to send forward the 1988 United Nations Convention on International Bills of Exchange and International Promissory Notes, which the United States had signed on 30 June 1990. She hoped that the necessary authority would be received to commit the United States to become a party to those conventions and protocol, since the United States was already a party to the United Nations Convention on Contracts for the International Sale of Goods, which it had been able to help to bring into force in January 1988.

74. Her delegation continued to be generally pleased with the work of UNCITRAL and the non-confrontational and professional climate in which UNCITRAL's member States and their representatives and experts worked with each other and with the Commission's excellent secretariat.

75. Mr. THIAM (Guinea) said that the UNCITRAL seminar held at Conakry in March 1990 had given businessmen, jurists and academics the opportunity to become informed about UNCITRAL and to appreciate the results of its efforts to develop and strengthen uniform rules of trade. Moreover, the seminar had promoted acceptance by the Government of Guinea of many legal texts prepared by UNCITRAL. The latter would shortly be notified of the ratification of those legal instruments. In particular, the seminar had encouraged his country's authorities to envisage the possibility of readapting and consolidating the national laws on trade. Guinea also wished to participate in the forthcoming seminar for French-speaking African countries and in the fourth UNCITRAL Symposium.

76. In that context, he emphasized that his country attached great importance to the need to promote the teaching, study and wider dissemination of international legal texts, and therefore considered that the United Nations Decade of International Law was very important. While acknowledging the substantial progress UNCITRAL had made at its latest session, his delegation felt that the Commission should speed up the elaboration and dissemination of legal texts essential to the creation of more equitable trading conditions and a freer flow of international trade. Lastly, he would like UNCITRAL to give States with limited resources more opportunities to participate in, and benefit from, its work.

77. Mr. MARTINEZ GONDRA (Argentina) observed that he had already emphasized that the convening of seminars and the dissemination of the texts of international conventions prepared by UNCITRAL were essential to a better and more widespread knowledge of international trade law and UNCITRAL's own work. In that connection, he expressed satisfaction with the secretariat's efforts to implement a broad programme of assistance and training. The recent seminars held in New Dehli and Moscow had demonstrated the efficiency with which the matter was being handled and the importance of host State co-operation in the seminars. He was looking forward to the fourth Symposium on International Trade Law, to be held in connection with

(Mr. Martinez Gondra, Argentina)

UNCITRAL's twenty-fourth session, and the organization of further seminars in developing countries. He appealed for contributions to the UNCITRAL Trust Fund, which made it possible to plan and finance those valuable programmes properly.

78. His delegation was convinced that the United Nations Decade of International Law would provide an excellent opportunity to promote the dissemination, knowledge and study of international trade law. UNCITRAL could make a positive contribution to the Decade by continuing its work. In that regard, he supported the idea that its future activities should include the preparation of a draft on general principles of international trade law.

79. It would be highly desirable for UNCITRAL to be familiar with the activities relating to the unification and harmonization of international trade law being carried out in regional and international bodies. At the current session the secretariat had submitted a new report containing information on matters which would contribute usefully to the harmonization and co-ordination of activities with various international organizations. In many cases, those organizations were carrying out studies and preparing drafts on topics and questions of interest to UNCITRAL. In order to make a more rational use of its resources and take advantage of the experiences of others, co-operation with regional and international bodies should be emphasized. For example, officials of those bodies could be invited to participate regularly in UNCITRAL meetings, so that they could inform it about the progress of work that might be of interest with regard to its own efforts.

80. The adoption of a series of international conventions on international trade testified to the effective and serious manner in which UNCITRAL was fulfilling the mandate entrusted to it by the General Assembly since its establishment. The Working Groups on International Contract Practices, the New International Economic Order and International Payments had proved to be appropriate means of developing activities and preparing drafts on specific topics. Those working groups were currently made up of all States members of UNCITRAL, and although that often obliged States to incur the cost of travel of their experts to Vienna or New York, it had the advantage of enabling all members to acquaint themselves at first hand with the various stages of elaboration of the drafts. He therefore believed that the current composition of the working groups should be maintained and if it was found necessary in the future to set up a new working group, provision should be made for the participation of all members of UNCITRAL and of observers. To that end, he would like to see greater participation by observers in meetings of UNCITRAL, which would help them to ascertain at first hand the status of the various drafts and would facilitate the adoption of the draft conventions prepared by UNCITRAL.

81. During consideration of the report of UNCITRAL on its twenty-second session, the delegation of Argentina had indicated that the draft legal guide on drawing up contracts in international countertrade transactions had been a subject of great interest to the developing countries. It had pointed out that in many cases the developing countries lacked the foreign exchange needed to carry on international trade, which therefore had to be conducted through countertrade arrangements

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(Mr. Martinez Gondra, Argentina)

(A/C.6/44/SR.4, para. 39). Nevertheless, noting that other important topics had been included in the programme of UNCITRAL and of its working groups, he would not insist that the topic should be dealt with as a matter of priority. He trusted that delegations which considered that other topics had priority would maintain their spirit of co-operation so that the work of UNCITRAL could move forward harmoniously.

82. Mr. BONELL (Chairman of UNCITRAL) assured delegations that he had taken note not only of their words of encouragement and appreciation but also of the many ideas they had put forward with regard to the current work of UNCITRAL and its future programme of work. He drew attention to the importance which the work of UNCITRAL could and must have in the context of the United Nations Decade of International Law, which had just begun.

83. As Chairman of UNCITRAL, he also noted with satisfaction that there seemed to be an overwhelming majority view that international trade law should play a prominent role during the Decade. UNCITRAL had already held a preliminary exchange of views on the possible practical steps which could be taken in that regard. In the light of the encouragement it had received from delegations and subject to the results of the work of the Sixth Committee at the current session, UNCITRAL would endeavour at its next session to continue developing its own ideas and proposals within its field of competence.

84. The CHAIRMAN declared that the Committee had thereby concluded its general debate on item 141. He also announced that the list of speakers on item 137, entitled "Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives" would be closed on Wednesday, 26 September at 6 p.m.

## AGENDA ITEM 137: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES (A/45/325, A/45/455 and Add.1)

85. Mr. FLEISCHHAUER (Under-Secretary-General, The Legal Counsel), introducing the Secretary-General's report (A/45/455 and Add.1), said that the General Assembly had emphasized in a number of resolutions the important role of diplomatic and consular missions and representatives in the maintenance of international peace and the promotion of friendly relations among States. In those resolutions the General Assembly had also requested States to report to the Secretary-General on serious violations of the protection, security and safety of diplomatic and consular missions and representatives. The reporting procedures for such violations had first been established in General Assembly resolution 35/168, of 15 December 1980. The current procedure had been adopted in General Assembly resolution 42/154, of 7 December 1987, and reaffirmed in its resolution 43/167, of 9 December 1988.

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(Mr. Fleischhauer)

86. Section II.A of the report contained information about violation reported by States in response to a note of the Secretary-General dated 23 January 1990 and addressed to States requesting reports of any such violations during the preceding 12 months. Section II.B contained the views submitted by States with respect to any measures needed to enhance the protection, security and safety of diplomatic and consular missions and representatives. Section III contained a report on the state, as at 15 August 1990, of ratification of or accessions to the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the respective optional protocols thereto, as well as the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents.

87. He noted that, after consideration of the item at the forty-third session of the General Assembly, Angola and South Africa had become parties to the 1961 Vienna Convention on Diplomatic Relations; Antigua and Barbuda, Bulgaria, the Byelorussian SSR, Mongolia, South Africa, the Ukrainian SSR and the USSR had become parties to the 1963 Vienna Convention on Consular Relations; and Bhutan, Kuwait, Maldives, Nepal and the Netherlands had become parties to the 1973 Convention on the Prevention of Crimes against Internationally Protected Persons, including Diplomatic Agents.

88. Those new ratifications and accessions were further evidence of States' enhanced awareness of the need to strengthen respect for the principles and rules of international law governing diplomatic and consular relations. However, as recent events in the Middle East showed, it was not sufficient for States to become parties to those instruments; the instruments must be implemented effectively so that they provided the protection they were designed to offer. It was necessary in that connection to be mindful of Security Council resolution 667 (1990), in which the Council had strongly condemned aggressive acts perpetrated against diplomatic premises and personnel in Kuwait, including the abduction of foreign nationals who had been present in those premises, and had demanded that Iraq should immediately protect the safety and well-being of diplomatic and consular personnel and premises in Kuwait. That resolution demonstrated once again the need to encourage implementation of the relevant instruments in relations among States.

The meeting rose at 5.05 p.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

SIXTH COMMITTEE
6th meeting
held on
Wednesday, 26 September 1990
at 3 p.m.
New York

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## SUMMARY RECORD OF THE 6th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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AGENDA ITEM 137: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES

ORGANIZATION OF WORK

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The meeting was called to order at 3.25 p.m.

AGENDA ITEM 137: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES (A/45/325, A/45/455 and Add.1)

1. The CHAIRMAN said that, on the item under consideration, in addition to the reports of States in section II of document A/45/455, two notes verbales had been received, one dated 25 September 1990 from the Permanent Mission of France to the United Nations addressed to the Secretary-General and the other dated 24 September 1990 from the Permanent Representative of the Netherlands to the United Nations addressed to the Secretary-General. Those notes verbales would be circulated to all States in accordance with paragraph 8 of General Assembly resolution 43/167.

2. Mr. KOSKENNIEMI (Finland), speaking on behalf of the five Nordic countries, said that, since those countries had proposed the inclusion of the item in the agenda 10 years earlier, the Assembly had considered it in an atmosphere of consensus and had systematically condemned all violations. That demonstrated the importance attached to the item. The importance of the role played by diplomatic and consular representatives in the maintenance of peace and the promotion of friendly relations among States made violations of the relevant rules particularly heinous. Such violations were never directed only against one particular person or one particular country, but were also always directed against the very system of international co-operation and the maintenance of international peace and security.

3. In that connection, close co-operation between the sending State and the receiving State was essential. International organizations could do little more than give expression to the universally felt need to enhance the protection of diplomatic and consular missions and representatives. It was for individual countries to take the practical steps necessary, in accordance with local circumstances and needs. The sending State was entitled to the best possible protection for its representatives, but the latter had a duty to comply strictly with the laws and regulations of the receiving State. In general, that bilateral co-operation worked very well.

4. Unfortunately, it was not possible to ignore the reports relating to various instances of violence against diplomatic or consular missions or representatives, such as those mentioned in the report of the Secretary-General (A/45/455 and Add.1). Such violations demonstrated the continuing need for precautionary measures to enhance the security of diplomatic and consular missions and representatives.

5. The most serious series of gross violations of the rules of diplomatic and consular law during the period under consideration resulted from Iraq's aggression against the independent State of Kuwait. The illegal occupation and annexation of Kuwait had led, first, to Iraq's illegal demand that all foreign diplomatic and consular missions in Kuwait should be closed and their representatives transferred

to Baghdad, and, subsequently, to the increasing pressure on the embassies and consular offices which had remained open. Supplies and running water had been cut off and military forces had been used to prevent the free movement of persons protected under international law and to maintain a continued threat of force. Individual acts of harassment had occurred and representatives had been prevented from performing their normal functions.

6. In its scope and deliberateness, the violation of diplomatic and consular immunities by Iraq was unprecedented in recent history. The Nordic countries reaffirmed the unequivocal condemnation of Iraq's illegal actions expressed on 16 September 1990 in the Security Council by his country's representative on behalf of the five Nordic countries, and they reiterated their support for Security Council resolution 667 (1990), which demanded that Iraq "immediately protect the safety and well-being of diplomatic and consular personnel and premises in Kuwait and in Iraq and take no action to hinder the diplomatic and consular missions in the performance of their functions, including access to their nationals and the protection of their person and interests".

7. The Nordic countries intended to present a draft resolution on agenda item 137, on the basis of resolution 43/167, which continued to be relevant, and would be open to any suggestions which other delegations might wish to make.

8. Mr. FERRARI BRAVO (Italy), speaking on behalf of the 12 States members of the European Community, said that it appeared from the report of the Secretary-General (A/45/455 and Add.1) that in the two years that had elapsed since the Committee had considered the item, diplomatic and consular missions had continued to be the targets of attacks of various types in different areas of the world, including the territory of members of the European Community. Missions of the States members of the European Community had also been attacked.

9. The Twelve reiterated their vigorous condemnation of those abhorrent acts and expressed their deep concern about their prevalence. Apart from the devastating effect they might have on the lives of individuals, those crimes also had more far-reaching consequences since, by attacking those entrusted with maintaining and promoting friendly relations among States, they might put those relations in jeopardy.

10. Other violations of the obligations relating to diplomatic and consular privileges and immunities were also cause for concern. It was essential that States observe scrupulously all obligations incumbent on them in that area by virtue of general international law and the relevant international conventions. The Twelve remained strongly committed to the resort to all lawful means for preventing crimes against diplomatic and consular representatives and violations of their immunities, and to the strengthening of international co-operation to that end.

(Mr. Ferrari Bravo, Italy)

11. International law granted privileges and immunities to diplomatic and consular representatives not for their personal benefit but in order to ensure the exercise of their functions to the benefit of international relations. While the sending State had a right to expect that its representatives were protected and their immunities respected, abuses of those privileges and immunities must be avoided. Respect for the laws of the receiving State was essential. The Twelve would continue to co-operate in measures to deal with abuses, which undermined the public's understanding of the need for privileges and immunities and, ultimately, jeopardized the conduct of international relations.

12. In addition to the existing international instruments, general international law contained a wealth of principles and rules on the subject. While it was desirable that those States which had not yet done so should soon become parties to the relevant conventions, what was essential was that the existing obligations should be fully observed. Efforts should be concentrated on strengthening the determination of States to comply fully with their international obligations.

13. In the past, the Twelve had refrained from commenting on specific cases of violations, but the violations which had occurred in Kuwait following its invasion and purported annexation by Iraq were so grave that they could not be passed over in silence. The Twelve reiterated their strong and unequivocal condemnation of Iraq for its orders for the closure of the diplomatic and consular missions in Kuwait and the withdrawal of the immunity of their staff, orders which the Security Council, in resolution 664 (1990) of 19 August 1990, had demanded should be rescinded. As the Twelve had stated categorically in the declaration issued at the Extraordinary Ministerial Meeting held in Brussels on 10 August 1990 (A/45/409-S/21502), those orders were serious violations of international law.

14. In recent weeks, Iraq had persisted in its flouting of the basic principles and rules of international law on the subject in resorting to acts of violence against diplomatic missions, violating diplomatic premises and abducting personnel enjoying diplomatic immunity and foreign nationals present in those premises. That behaviour represented an intolerable affront to international law and the rights of the individual. The Twelve shared the outrage and condemnation expressed by the Security Council in its resolution 667 (1990) of 16 September 1990.

15. In comparison with the magnitude of the wilful violations committed by Iraq, most of the violations mentioned in the report of the Secretary-General might appear of lesser gravity. He wished none the less to reiterate the importance of the faithful and scrupulous observance of all obligations under international law for the protection of diplomatic and consular missions and representatives. The reporting procedures established more than 10 years earlier by General Assembly resolution 35/168 still performed a useful, even though modest, function in the prevention of violations.

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16. Mr. BOUTEIKO (Ukrainian Soviet Socialist Republic) said that traditionally his Government had paid great attention to the item under consideration, for it felt that the strict observance by all States of the generally accepted norms and principles of diplomatic and consular law guaranteed normality in inter-State relations, including relations within the framework of international organizations. Until recently, his country had conducted most of its relations with other States within the framework of such organizations, and in particular through its missions to those organizations.

17. On 16 July 1990, his country's Parliament had issued a declaration stating that henceforward it would maintain direct relations with other States, conclude agreements with them and exchange diplomatic, consular and trade missions. The implementation of that resolution meant that the issues considered under agenda item 137 had assumed new importance for his country.

18. The main responsibility for ensuring normal conditions for the work of diplomatic and consular missions must be assumed by receiving States, which should adopt, as appropriate, the necessary measures to eliminate hostile actions against missions and to punish their perpetrators. It was likewise inadmissible that persons enjoying privileges and immunities should violate the laws of the receiving State. On the basis of those principles, his Government was taking the necessary measures to ensure appropriate conditions for the functioning of the missions of other States in its territory.

19. After studying carefully the Secretary-General's report (A/45/455 and Add.1), his delegation regretfully observed that despite the efforts made by States, attacks against diplomatic and consular missions and representatives continued to occur. The report mentioned more than 50 cases of violations of the protection, security and safety of diplomatic and consular missions and representatives, as compared with the 20 cases mentioned in the previous report. Those incidents, no matter how insignificant they might seem, had a negative effect on the general international situation and on relations between accrediting and receiving States. The risk of attacks aimed at preventing the normal functioning of diplomatic and consular missions increased considerably when States committed acts of aggression, since that undermined the foundations of international relations. His delegation therefore supported Security Council resolution 667 (1990), in which the acts of aggression committed by Iraq against diplomatic premises and personnel in Kuwait were forcefully condemned.

20. The report and the incidents in the Middle East showed that the signature and ratification of the relevant conventions and treaties was not enough to ensure a normal framework for the activities of diplomatic and consular representatives. To that end, it was necessary to strengthen the legal framework of agreements such as the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations. It was also important that the 1975 Vienna Convention on the Representation of States in their Relations with Organizations of a Universal Character should enter into force soon and that the number of States parties to the

(Mr. Bouteiko, Ukrainian SSR))

1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents should be increased. His country was ready to support efforts aimed at ensuring that more effective steps were taken in that area, within the framework of the United Nations.

21. Mr. SANDOVAL (Ecuador) noted with great concern that in the past two years the number of attacks on diplomatic and consular missions and representatives had increased. That was not consistent with the climate of détente prevailing in the international community, since diplomatic and consular representatives had become the targets of unjustified attacks that made it difficult for them to carry out the functions they were supposed to perform.

22. Ecuador had traditionally respected the security, immunity and inviolability of diplomatic and consular missions and representatives, as was shown by the fact that, since the adoption of General Assembly resolution 35/168 of 15 December 1980, Ecuador had never figured among the States in which attacks had been launched against the objective and subjective elements of diplomatic and consular relations. Ecuador reiterated its intention to continue that tradition and was always mindful of the obligations imposed on States by the relevant provisions of the Vienna Conventions of 1961, 1963 and 1973. His delegation therefore welcomed the 12 new ratifications of those instruments. Nevertheless, it was necessary to reiterate the appeal to all States parties to adapt their internal procedures with a view to ensuring the implementation of the provisions of those conventions and guaranteeing the performance of diplomatic and consular functions.

23. Mr. AHMED (Iraq), speaking in exercise of the right of reply, said that Iraq had always protected the security and safety of diplomatic and consular missions in its territory and maintained the conditions necessary by those missions to function properly. His Government had always fulfilled in good faith the obligations imposed by the relevant international conventions and agreements and consequently diplomatic and consular missions in Iraq had never been subjected to acts which were not in keeping with those instruments.

24. With regard to recent events, his Government had notified the States concerned that as a result of the unification which had taken place there was no justification for the existence of diplomatic missions in Kuwait City. Subsequently, the Iraqi authorities had granted those missions a period of two weeks in which to transfer their headquarters to Baghdad. In that context, Iraq reiterated its desire to ensure the security of missions situated in its territory and trusted that the States which continued to maintain diplomatic or consular premises in Kuwait City would transfer their headquarters to Baghdad.

The meeting was suspended at 4.10 p.m. and resumed at 4.25 p.m.

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## ORGANIZATION OF WORK

25. The CHAIRMAN recalled that the General Assembly, in its resolution 44/23 of 17 November 1989, had decided that at its forty-fifth session a working group of the Sixth Committee would be established with a view to preparing generally acceptable recommendations for the United Nations Decade of International Law. It was his understanding that the Committee was prepared to agree that the various regional groups should occupy the chair of the working group in turn. Yugoslavia would be the first country to occupy the chair and the candidature of Mr. Budislav Vukas had been submitted in that connection. If there were no objections, Mr. Vukas would become the chairman of the working group.

26. It was so decided.

27. The CHAIRMAN recalled that the General Assembly, in its resolution 44/36 of 4 December 1989, had decided to hold informal consultations at its forty-fifth session to study the draft articles on the status of the diplomatic courier and the diplomatic bag not accompanied by diplomatic courier and the draft optional protocols thereto, as well as the question of how to deal further with those draft instruments with a view to facilitating the reaching of a generally acceptable decision. If there were no objections, those informal consultations would be conducted by the Chairman of the International Law Commission.

28. It was so decided.

The meeting rose at 4.35 p.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

SIXTH COMMITTEE
7th meeting
held on
Tuesday, 2 October 1990
at 10 a.m.
New York

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# SUMMARY RECORD OF THE 7th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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AGENDA ITEM 137: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES (continued)

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The meeting was called to order at 10.15 a.m.

AGENDA ITEM 137: CONSIDERATION OF EFFECTIVE MEASURES TO ENHANCE THE PROTECTION, SECURITY AND SAFETY OF DIPLOMATIC AND CONSULAR MISSIONS AND REPRESENTATIVES (*continued*) (A/45/455 and Add.1)

1. Mr. BELLOUKI (Morocco) said that it was unacceptable for diplomatic and consular missions and representatives to continue to be the preferred target of attacks and harrassment. The security and safety of those missions and representatives were necessary if there were to be stable relations between States, and their absence would hinder the development of the principles of international co-operation. No one could deny their role in maintaining international peace and security and in promoting friendly relations and co-operation among States. Any hostile act directed against diplomatic and consular missions and representatives had obvious disastrous consequences on inter-State relations.

2. To prevent and punish such hostile acts was to protect a system recognized and respected by the most ancient civilizations. The rules governing the status of diplomatic and consular missions and representatives had been patiently elaborated by nations holding different socio-cultural values, and the great authority of the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations sprang from the fact that they had codified and sanctioned well-established practices and customs. The principles and rules set forth in those two Conventions constituted the minimum basis necessary for the preservation of peaceful relations among States.

3. In its resolution 43/167, strongly condemning acts of violence against diplomatic and consular missions and representatives and urging States to observe, implement and enforce the principles and rules of international law governing diplomatic and consular relations, the General Assembly had shown its awareness of the serious nature of any violation in that area, especially when committed by a State.

4. For that reason, his delegation deplored the punitive measures taken by the Iraqi authorities against diplomatic and consular missions and representatives in Kuwait, including the diplomatic mission of Morocco and its staff, and the pressure and constant threats to which the latter had been subjected, having been prevented from entering the Embassy offices, then summarily ordered to close the Embassy and leave Kuwait altogether. It also deplored the fact that they had been prevented from withdrawing from Kuwaiti banks the funds required to meet their most basic needs and that they had finally been forced to leave Kuwait, under threat, for Baghdad, where they had been stripped of their diplomatic immunity and taken hostage.

5. Despite the inhuman treatment inflicted on its diplomats, Morocco considered that its Embassy in Kuwait was still open, in accordance with the rules and principles of international law, and the resolutions of the League of Arab States and of the Security Council, in particular resolutions 664 (1990) and 667 (1990),

(Mr. Bellouki, Morocco)

which condemned the Iraqi aggression against Kuwait and declared its annexation null and void. Kuwait thus remained a full member of the international community, in which duly accredited embassies should be treated as such and should be allowed to carry out their official functions under the best possible conditions.

6. In conclusion, his delegation hoped that that unfortunate precedent would inspire increased efforts to emphasize the imperative nature of the obligations incumbent upon all States in the area of diplomatic and consular law, which granted privileges and immunities not for the personal benefit of representatives but to ensure the performance of their official functions.

7. Mr. HANAFI (Egypt) said that diplomatic law and, specifically, the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations guaranteed the normal functioning of relations between States in an atmosphere of mutual respect. Those two Conventions expressly provided for the protection of diplomats and diplomatic and consular missions. In order to allow them to perform their functions, they granted them privileges and immunities that had been established by international law and should not be violated under any pretext.

8. His delegation, having noted the report of the Secretary-General (A/45/455), strongly condemned acts of violence against diplomatic missions and representatives and urged States to ensure respect for the principles of international law relating to the protection, security and safety of diplomatic missions and representatives and to take the necessary measures, at both the national and the international level, to prevent such acts.

9. Recent events had proven that being a party to international conventions was not enough; it was also necessary to comply with their provisions under all circumstances. Iraq had violated its obligations under the aforementioned Conventions by ordering the closure of diplomatic and consular missions in Kuwait and by exerting constant pressure on those missions and their staff. In the opinion of his delegation, Iraq had a responsibility to ensure the protection, security and the safety of missions and diplomatic personnel accredited to Kuwait and to respect their diplomatic immunity under the Vienna Conventions, of which it was a signatory. The international community, which had unanimously condemned those violations, should continue to do so as long as the violations persisted. His delegation reaffirmed its support for Security Council resolutions 664 and 667 and asked Iraq to ensure the security, safety and comfort of diplomatic missions in Kuwait and Iraq in accordance with the principles of international law.

10. Mr. MAHNIC (Yugoslavia) noted with regret that, at a time when the importance of international law was being increasingly affirmed, there should still be instances of violations of the rules of law in international relations with respect to the protection, security and safety of diplomatic and consular missions and representatives. He expressed profound concern at the Iraqi Government's decision to order the closure of diplomatic missions accredited to Kuwait and to withdraw the immunities and privileges of those missions and their personnel. There was no doubt that that decision was contrary to international law since it was based on

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(Mr. Mahnic, Yugoslavia)

the Iraqi invasion and annexation of Kuwait, which represented a flagrant violation of the basic principles of international law. It was therefore quite logical for the international community, through the United Nations Security Council, in particular in resolution 667 (1990), to have strongly condemned the measures taken by Iraq against diplomatic missions and personnel in Kuwait and to have called on Iraq to rescind them. His delegation fully supported that and other Security Council resolutions adopted in connection with the Iraqi aggression against Kuwait.

11. It appeared from the reports submitted by Member States concerning serious violations with regard to the protection, security and safety of diplomatic and consular missions and representatives that such acts were still quite numerous, and the Member States and the United Nations should intensify their efforts to prevent them. It was obvious that legal norms and legal systems could scarcely be effective in the absence of preventive meaasures. The host countries bore a great responsibility and were obliged to take all necessary measures, particularly with respect to the prevention of activities of organizations, groups and individuals that committed acts against diplomatic and consular missions and representatives which were detrimental to friendly relations between States. For its part, the sending State should be willing to co-operate. In that respect, co-operation between the host country and diplomatic or consular missions accredited to it was of particular importance.

12. His delegation considered the procedure of having the Secretary-General prepare reports on acts committed against diplomatic and consular missions and representatives and on measures undertaken to apprehend and punish their perpetrators to be most useful. The very fact of drawing attention to inadequacies in the protection of those missions might help to enhance their protection. Yugoslavia favoured the strengthening of bilateral and multilateral co-operation in that area and supported all efforts within the United Nations to secure the adoption of more effective measures for the protection of diplomatic and consular missions and representatives.

13. Mr. JASUDASEN (Singapore) said that the norms and principles of international law governing diplomatic and consular missions imposed two sets of obligations. The first were incumbent on the receiving State, which had to take all necessary measures not only to facilitate the work of diplomatic and consular missions and representatives but also to put an end to hostile acts against them and punish those responsible for them. The receiving State was also required to implement preventive measures when criminal and terrorist activities against diplomats at the mission increased. The second set of obligations were incumbent upon the sending State, which must ensure that its representatives and missions operated strictly within the limits prescribed by international law, complied scrupulously with the laws and regulations of the receiving State in the discharge of their duties, and refrained from abusing their privileges and immunities.

14. It was a matter of concern, and indeed alarm, to note from the Secretary-General's report (A/45/455 and Add.1) that violations had been committed throughout the world and that no country, not even the Holy See, seemed to have

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been spared. Moreover, the fact that a vast majority of Member States had not sent replies suggested that many violations went unreported. The reporting procedure was nevertheless a worthwhile exercise and should be continued, since not only did it remind all States of their duties and obligations, but - it was to be hoped - should also persuade them to enforce stricter measures to protect the safety of diplomatic and consular missions and representatives, or to desist from any acts directed against them. While his delegation was fully satisfied with the report of the Secretary-General, it had some suggestions as to how the work of the Sixth Committee could be furthered and how the role of the Secretary-General could be strengthened in that regard.

15. Firstly, the Secretary-General's report was merely a compilation of reports from Member States; the time had perhaps come to go a step further and request the Secretary-General to analyse the information contained in reports from States; the information could thus be summarized and classified into broad categories, such as violations perpetrated by States, non-State groups, terrorist groups and individuals. While it was true that analysing the information contained in the reports and presenting it in tabular form was a delicate matter, his delegation was confident that the Secretary-General and his staff could accommodate sensitivities without difficulty.

16. Secondly, he noted that only 38 States had sent replies. Apart from a more sustained effort to elicit more replies, the Secretary-General should perhaps consider using other reliable sources of information, such as the media, which regularly - and at times only too happily - reported violations.

17. Thirdly, the Secretary-General's report focused mainly on violations which had an impact on inter-State relations. Although that was understandable given the way in which the reporting procedure was designed, it must be acknowledged that the system did not fully reflect the extent of abuses of diplomatic privileges by missions or representatives of sending States. In that connection, host countries, which were probably in the best position to monitor such abuses, should be encouraged to send more comprehensive reports. The foregoing suggestions were intended to help small countries like Singapore, which had limited administrative machinery, to monitor the situation more effectively and be better informed so that they could take appropriate measures not only *vis-à-vis* their own diplomats and missions, but also to ensure the protection of representatives and missions accredited to them.

18. Mr. AL-SABEEH (Kuwait) said that on the previous Wednesday an attempt had been made to distort the facts and, in order to clarify the situation, he recalled the events which had occurred in Kuwait and the strong condemnation of Iraq by the international community, expressed in the Security Council resolutions. He concluded that the departure of the diplomatic staff of the missions accredited to Kuwait could in no way be justified.

19. People could not live in peace without the protection and authority of the law, which was why international organizations, with their many organs, had been established and had been made responsible for formulating the laws and principles

(Mr. Al-Sabeeh, Kuwait)

governing all aspects of the life of peoples. He recalled that the General Assembly in 1952 in resolution 685 (VII), had requested the International Law Commission to give priority to the codification of the topic "Diplomatic intercourse and immunities" and that the Sixth Committee had had that topic on its agenda since 1949.

20. Everyone was aware that the Iraqi aggression against Kuwait had breached all laws, rules and customs and had been directed not only against Kuwait but also against diplomatic and consular missions, their staff and their property, to the extent of holding persons with diplomatic immunity hostage. Such acts were unprecedented since the adoption of the Vienna Convention on Diplomatic Relations and the Vienna Convention on Consular Relations. The Ambassador of Iraq to Kuwait had himself supervised the plundering of Kuwait, the sharing out of the booty and its transfer to Iraq, as well as the acts of aggression perpetrated against the diplomatic community, before becoming the military judge of the occupied country.

21. The international community was dismayed to see all laws and customs crushed by tanks in a country which had complied with international law since its inception. What the diplomatic community had been subjected to in Kuwait was flagrant proof of the criminal and illegal character of the Baghdad régime and was the occasion for a pressing appeal to the international community to intervene in order to uphold international law which had been violated in Kuwait. To that end, the United Nations Security Council had adopted a series of resolutions, including resolution 667 (1990) concerning the situation of the diplomatic and consular missions in Kuwait and their staff. It was essential to implement those resolution in full.

22. Reports from thousands of civilians, journalists and diplomats bore witness to the chasm between the conduct of the legitimate Government of Kuwait, founded on respect for law and justice, and that of the Iraqi occupying authorities in Kuwait, which violated law and justice and resorted to terror, laying siege to diplomatic and consular missions, entering some of them and abducting members of their staff. A dark chapter in the history of international law was being written, constituting an insult to humanity, and a breach of all agreements and resolutions governing diplomatic relations among States and aimed at protecting the rights and immunities of diplomats. He called on the Committee to spare no efforts to resist the criminal and inhuman practices of Iraq in Kuwait in order to ensure the just victory of the Kuwaiti people who had been unjustifiably attacked, so that law would prevail.

23. Mr. KIRSCH (Canada), speaking also on behalf of Australia and New Zealand, recalled that the inviolability of diplomatic missions and agents was one of the principles now codified in numerous diplomatic conventions, including the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the Respective Optional Protocols, and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents. The obligation of States to protect diplomats and consular representatives arose from recognition of the important role played by

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(Mr. Kirsch, Canada)

them in forging friendly relations and maintaining peace among States. Any violation of that obligation struck at the very institutions upon which good international relations depended.

24. The Secretary-General's report (A/45/455 and Add.1) showed, however, that attacks against diplomatic missions, property and agents were continuing at an increasing rate. While such attacks could not always be prevented, at least almost all States recognized that it was their duty to take appropriate steps to preserve the security of diplomatic premises and agents.

25. That was not true of Iraq which, although a party to the Conventions to which he had referred, had deliberately flouted them by forcing the closure of diplomatic and consular missions in Kuwait and by withdrawing the immunity of the personnel of those missions. Incidents of the most serious kind had taken place on 14 September 1990, when Iraqi troops had invaded the residence of the Canadian Ambassador in Kuwait and the diplomatic premises of a number of other foreign missions in that country, and had detained their personnel illegally in defiance of the inviolability of the premises and personnel of the diplomatic missions of Canada and other States.

26. Those actions constituted a totally unjustifiable breach of the most fundamental principles of diplomatic relations and of the most widely accepted norms of international law, and they underscored the need for the Organization to monitor, in the closest possible way, States' compliance with the international conventions relating to the immunities and protection of diplomatic missions and their personnel. His delegation joined in the appeal made by the representative of Kuwait in that regard.

27. Mrs. BELLAMINE-DLIMI (Tunisia) reaffirmed her country's strict adherence to the norms of diplomatic and consular law and the rigorous application of the relevant conventions. Recognizing the important role played by diplomatic missions in relations between States, Tunisia regarded violations of diplomatic immunity as undermining the cause of co-operation and relations between civilized States.

28. Her country had always endeavoured to facilitate the work of the diplomatic and consular missions accredited to it. At the legal level, Tunisia had acceded in 1964 to the Vienna Convention on Consular Relations, and in 1968 to the Vienna Convention on Diplomatic Relations. It was also a party to the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons including Diplomatic Agents.

29. In practical terms, Tunisia was protecting the chancelleries and residences of heads of diplomatic missions, and diplomatic personnel in Tunisia enjoyed the immunities provided under the relevant conventions. Since the adoption of General Assembly resolution 35/168 inviting all States to report to the Secretary-General serious violations of the protection, security and safety of diplomatic and consular missions and representatives, no incident had been reported in Tunisia.

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(Mrs. Bellamine-Dlimi, Tunisia)

30. Her delegation noted with regret that there were continuing reports of violations of diplomatic immunities. In that connection, it emphasized the responsibility of the host country, which must undertake to provide complete protection for the missions accredited to it. That entailed both a legal and a moral obligation. Indeed, it involved what in civil law was known as an "obligation of result".

31. In conclusion, her delegation called upon States which had not yet done so to incorporate in their domestic legislation legal provisions aimed at strengthening the protection of the immunity and inviolability of diplomatic missions.

32. Mr. MOLNAR (Hungary) said that his country had always advocated strict and unswerving observance by all States of the principles and norms of diplomatic and consular law as an essential prerequisite for the maintenance of international peace and security, as well as for normal relations between States.

33. In his delegation's view, there was no lack of international legal instruments in that area; on the other hand, it was necessary to strengthen the determination of States to abide by their obligations. Hungary, which was a party to the main multilateral conventions in that field, had acceded on 8 December 1989 to the Optional Protocol to the 1961 Vienna Convention on Diplomatic Relations and to the Optional Protocol to the 1963 Vienna Convention on Consular Relations. His delegation wished to stress in that regard that, while sending States were entitled to expect the best possible protection of their representatives, those representatives also had the duty under international law to respect the laws and regulations of the receiving States.

34. In reviewing the Secretary-General's report (A/45/455 and Add.1), his delegation noted with concern that a number of violations of the inviolability and immunity of diplomatic missions and personnel had occurred during the past year. In particular, the illegal acts committed by Iraq constituted the most flagrant and unprecedented violation of the 1961 Vienna Convention on Diplomatic Relations, the provisions of the Charter of the United Nations and the generally accepted principles of diplomatic law.

35. Hungary considered the annexation of Kuwait by Iraq as null and void, and therefore rejected the explanation that the union of those two countries justified the unilateral Iraqi decision to close the diplomatic missions operating in Kuwait and to withdraw the immunity of their personnel. In accordance with Security Council resolutions 664 (1990) and 667 (1990), his delegation called upon the Government of Iraq to rescind the unlawful measures it had taken, to guarantee the unhindered functioning of diplomatic and consular missions in Kuwait, and to restore and respect their inviolability and immunity.

36. His delegation regarded any attack on the security of diplomatic and consular missions and representatives as a blow to the international community as a whole, and therefore considered that all Member States must jointly and individually take firm and consistent action to put an end to those violations. To that end, the

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General Assembly should keep the item on its agenda as long as violations of the rules of diplomatic law continued. His delegation considered that the reporting procedure in that regard was important and useful in that it enabled States to contribute to the prevention of violations of the norms of international law.

37. Mr. LIAO Jincheng (China) said that the inviolability of diplomatic and consular missions and representatives was the most basic of the latter's privileges and an important principle of international treaty and international customary law, respect for which was essential for maintaining normal international relations and establishing friendly and co-operative relations among States, particularly in the present-day world, where international relations and co-operation were ever expanding.

38. The Chinese Government, which had always strongly condemned acts of violence against diplomatic and consular missions and representatives, felt that the international community must adopt effective measures to prevent any further incidents of that nature. China was a party to the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations, the Conventions on the Privileges and Immunities of the United Nations and of the Specialized Agencies and the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents. The Chinese Government had always honoured its obligations under those Conventions and had always implemented the relevant United Nations resolutions. Diplomatic and consular missions and representatives and the offices of international organizations and their representatives enjoyed the effective protection of the Chinese Government. The departments and agencies concerned had also adopted various administrative and technical measures to provide better protection for the security of diplomatic and consular missions and representatives. For example, in the war on terrorism, the Chinese authorities had tightened the formalities for exit from and entry into Chinese territory as well as security inspections. Persons who were likely to be a threat to foreign embassies and to the offices of the United Nations and other international organizations in China were kept under strict surveillance. Experience had shown that those measures were relatively effective in preventing any act of violence against diplomatic and consular missions and representatives in China.

39. His delegation felt that the item should remain permanently on the agenda of the General Assembly. It also favoured strengthening international co-operation in that area and full implementation of the rules set forth in existing international instruments. It urged those States that had not yet done so to accede to the relevant conventions as soon as possible.

40. His delegation deplored the incidents and acts of violence that continued to threaten the security of diplomatic and consular missions and representatives because they not only impeded the normal operation of diplomatic and consular missions and exchanges between States, but also had a direct impact on international peace and security. His delegation felt that the closing by the Iraqi Government of all embassies and consulates in Kuwait, the violation of the

(Mr. Liao Jincheng, China)

diplomatic premises of certain countries and the detention of diplomatic personnel constituted a serious violation of the Vienna Conventions on Diplomatic and Consular Relations. It hoped that the Iraqi Government would put an immediate end to all those violations of international law.

41. The United Nations should urge all States to abide strictly by international law and the relevant conventions and to enact necessary domestic legislation and adopt effective administrative measures to strengthen the protection of diplomatic and consular missions and representatives. The latter in turn should perform their functions in good faith, in accordance with the relevant international conventions, and respect the laws of the country in which they resided. The sending State had an obligation to prevent any abuse of the privileges and immunities accorded to its diplomatic and consular missions and representatives. His delegation wished to strengthen its co-operation with other countries in order to study all effective recommendations or measures that might strengthen the protection of diplomatic and consular missions and representatives.

42. Miss RAUSCHER (Austria) said that for some years the international community had noted a gradual improvement in the protection of diplomatic and consular premises and representatives because States had become more mindful of their relevant obligations under international law. Nevertheless, incidents had continued to be reported to the Secretary-General, in accordance with the relevant General Assembly resolutions. The two conventions that regulated relations between States in that area, namely, the Vienna Conventions on Diplomatic and Consular Relations, were among the most widely accepted multilateral treaties, each having been ratified by more than 120 States. It was in the interest of all States to abide strictly by the relevant rules of international law, bearing in mind that all States were at the same time receiving and sending States.

43. The discussion on that item revealed a very broad consensus among States. None had doubted the need to reaffirm the validity of the relevant rules of international law on the sanctity of diplomatic premises and representatives, which was one of the oldest and most widely accepted norms. As times changed, States were becoming increasingly aware of the role played by foreign diplomats in reconciling the interests of the sending and the receiving States and in establishing friendly relations between States. It should also be borne in mind that international law granted privileges and immunities to diplomatic representatives not for their personal benefit but in order to ensure the orderly functioning of the missions.

44. The report of the Secretary-General (A/45/455 and Add.1) showed that a number of incidents had again occurred during the past year. Austria condemned every act committed against missions and diplomats, while recognizing that it would undoubtedly be impossible to eliminate such incidents entirely. She noted with satisfaction, however, that States were fully aware not only of their obligations under international law but also of the fact that it was in their own interest to punish the perpetrators of such unlawful acts and to take measures to prevent further such acts.

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(Miss Rauscher, Austria)

45. Austria could not, however, overlook the fact that the most fundamental norms relating to the conduct of diplomatic relations were currently being violated by one State, even though that State had undertaken to respect them when it acceded to the relevant international instruments. The breaches of international diplomatic law being committed by Iraq were of such a grave nature that Austria could only condemn them in the strongest possible terms. Iraq's attitude was contrary to the generally accepted code of conduct of civilized nations and could not be tolerated by the international community. Austria therefore supported Security Council resolutions 664 (1990) and 667 (1990), which condemned such violations of international law and were designed to put an end to that unacceptable situation.

46. Austria was prepared to co-operate with all States that wished to help achieve that goal. It felt that the reporting system established by the General Assembly should be maintained because it made it possible to collect relevant information, encouraged States to pursue the matter at the bilateral and the multilateral levels and reminded them of their obligations. Her delegation welcomed the intention of the Nordic countries to prepare and submit a draft resolution on that question on the basis of the relevant resolution adopted two years earlier.

47. Mrs. WILLSON (United States of America) said that those States that had not yet done so should become party to the relevant treaties, namely, the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations and the conventions designed to counter the ongoing terrorist threat to diplomatic personnel. States must also undertake to respect the provisions of those treaties, to deter acts of violence against the diplomats in their territory and, when such acts occurred, to move immediately to prosecute or extradite the offenders. Respect for the rules set forth in those conventions, even under difficult circumstances, strengthened the international community's commitment not only to the rule of law but also to the goals and purposes of the Charter.

48. It was therefore regrettable that there continued to be reports of incidents of violence against the representatives of States and international civil servants because such incidents undermined the harmony of international relations. At the same time, it was encouraging that many of those reports indicated that police and local authorities had responded promptly and effectively. That showed that most Governments took their obligations to protect diplomatic personnel and premises seriously. Moreover, those who enjoyed privileges and immunities by virtue of their status as representatives of States or international organizations had a responsibility to obey the laws of the receiving State.

49. Any interference with the performance of diplomatic or consular functions, whether by individuals or by groups, was unacceptable. Such interference by States was reprehensible and demanded the strong and unanimous condemnation of the international community. Reports received the previous week of troops entering diplomatic premises in Myanmar and detaining and interrogating Burmese employees of the mission in question were shocking examples of deliberate violations of the rules of law in respect of diplomatic protection.

(Mrs. Willson, United States)

50. The United Nations Security Council, in resolution 667 (1990), had expressed its outrage at recent violations by Iraq of diplomatic premises in Kuwait and at the abduction of personnel enjoying diplomatic immunity and foreign nationals who had been present in those premises. The Council had stated that those actions constituted a flagrant violation of Iraq's international obligations and struck at the root of the conduct of international relations. Everyone knew of the actions Iraq had since taken against those diplomatic and consular personnel who had had the misfortune to be in the State of Kuwait under Iraqi occupation. Many missions had been forced to close as a result of Iraqi harassment, and those which remained open operated under the worst of circumstances, cut off from public utilities, unable to venture from their embassies or provide consular services and generally in a perpetual state of fear. Everyone knew also of the recent Iraqi violations of the inviolability of some of those premises, in blatant disregard of established international law as set forth in the Vienna Convention and in direct and contemptuous violation of binding decisions of the Security Council. Finally, everyone knew of those diplomats accredited to the legitimate Government of Kuwait who remained hostage in Iraq, despite Iraqi promises that they could leave Kuwait through Baghdad.

51. The United States had joined with the rest of the international community in decrying those actions. The representatives of Governments were abused and mistreated in flagrant violation of international law, and the international community should respond with one voice to the appeal made during the current meeting by the representative of Kuwait, by reiterating that the acts of aggression must cease.

52. The extreme gravity of the situation had focused the world's attention, but the need for vigilance in upholding the rule of law in the area of diplomatic protection must be ongoing. Each incident was noteworthy because of the impact on the individuals involved and the incremental effect on diplomatic relations. In that regard, her delegation thanked the Nordic States for having requested that the subject be placed on the agenda of the General Assembly and the United Nations Secretariat for its important role in implementing General Assembly resolutions on the protection of diplomats.

53. Mr. JOEDO (Indonesia) said that the current session of the General Assembly clearly reflected the magnitude of the problem of the protection and safety of diplomatic and consular missions and representatives which had become increasingly vulnerable and burdened by acts of terrorism. The principle of inviolability of diplomatic missions was one of the oldest and most universally established concepts in relations between States. It was in that context that the various incidents endangering the safety of diplomatic agents continued to deserve careful consideration by the international community, inasmuch as acts of violence against diplomats and diplomatic missions could not be adequately curbed without the active co-operation of all States.

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(Mr. Joedo, Indonesia)

54. In that regard, the United Nations had an important role to play, and it should continue its efforts towards the progressive development of diplomatic law, particularly by the codification of generally acceptable and practical measures into international legal instruments. In his delegation's view, the problem of organized terrorist activities had affected diplomatic relations in more than one way. The Committee should bear that in mind when preparing recommendations for the United Nations Decade of International Law. The holding of the Decade could prove to be a truly useful exercise in providing an internationally acceptable solution to that pressing problem. Indonesia, as a member of the Non-Aligned Movement, had been among the countries on whose initiative the United Nations General Assembly had, at its forty-fourth session, proclaimed the 1990s as the United Nations Decade of International Law; that decision had been strongly supported by the Heads of State or Government of non-aligned countries at their ninth summit conference in Belgrade. International law governing diplomatic relations should indeed be reviewed from time to time so as to conform to the changing circumstances of world society.

55. Two decades ago, the international community had adopted almost unanimously the Vienna Conventions on Diplomatic Relations and on Consular Relations. Since then, the role and functions of diplomatic representatives had changed. However, despite gross violations of diplomatic security and safety, the international community continued to regard the Conventions as binding on the host country; any violations thereof had invariably been condemned, and constituted valid grounds for action by the States concerned.

56. His delegation was convinced of the necessity of increasing co-operation among States to eradicate the underlying causes of terrorism and thereby to counter its effects. Undoubtedly, close co-ordination between members of the United Nations could contribute to the effective implementation of specific measures - bilaterally, regionally and multilaterally, or within the broader framework of the United Nations - to deter acts of violence against diplomatic and consular missions. Such measures might include the adoption by host Governments of legislation on the prevention of terrorism, alertness in the State's police forces, introducing a monitoring system for strengthening security for diplomatic missions exposed to higher risk, and measures to control entry at the border. What was increasingly important was concerted action by the international community to envisage measures against those States which harboured terrorists, by holding them responsible for violation of established principles of international law, under the doctrine of State responsibility.

57. Finally, the Government of Indonesia wished to strongly emphasize the fundamental and solemn obligation of all host States to extend co-operation to protect the safety and security of diplomatic representatives and missions. Of paramount importance was the maintenance of diplomatic relations which symbolized friendship and harmony between States. It was thus essential for countries to streamline domestic legislation so as to fulfil their responsibility under international law and agreements.

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58. Mr. HUSSAIN (Pakistan), recalling the obligations imposed on both sending and receiving States by the 1961 Vienna Convention on Diplomatic Relations, the 1963 Vienna Convention on Consular Relations and the 1973 Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, said that Pakistan was a party to those three Conventions, and had given effect to its international obligations in its domestic legislation by enacting anti-terrorist laws which prescribed the severest punishment not only for the perpetrators of such offences but also for those individuals, groups or organizations who encouraged, instigated or organized or in any other manner engaged in such activities.

59. His delegation was deeply concerned at the increasing incidents of violence against diplomatic and consular missions and agents and against representatives of intergovernmental organizations in different parts of the world. It strongly condemned such attacks, regardless of the motives behind them. Pakistan was committed to taking all possible measures to prevent acts of violence against the diplomatic and consular community and to punish the culprits if such incidents should occur.

60. In conclusion, he stressed that if the provisions of international instruments were strictly adhered to and faithfully applied, the necessity for additional measures would not arise. All States were required to perform their international obligations in good faith.

61. Mrs. OBI-NNADOZIE (Nigeria) said that current trends in international relations had given increased relevance to the provisions of the Vienna Conventions, and had demonstrated the need for States to reaffirm their commitment to those universal instruments. There were many cases of disputes in the world leading to violations of those Conventions, but Nigeria continued to advocate the use of peaceful means for the settlement of disputes through the good offices of the Secretary-General.

62. In spite of the emerging state of general agreement between nations, there were many cases of violations of the immunities and privileges of diplomatic missions and their personnel. All such violations should be condemned unequivocally. No case, however small or trivial it might appear, should be condoned. Rather, all States should "go an extra mile" in taking steps to enhance the protection, security and safety of diplomatic and consular missions and their representatives.

63. Member States should establish units within their regular police or law enforcement agencies for the purpose of protecting the diplomatic corps. Diplomacy could not be practised in a state of fear, anarchy or terrorism, as that obviously would lead to suspicion and mistrust, which were contrary to the aims and aspirations of the Organization. It was for that reason that the Nigerian Government had created the Diplomatic Protection Unit within its police force, and had charged it with ensuring the safety of diplomats and foreign delegations in Nigeria. Finally, there was need for a concerted effort by Member States to consider acceding to the various instruments dealing with diplomatic and consular

(Mrs. Obi-Nnadozie, Nigeria)

relations, as that would further enhance the functioning of both diplomatic and consular establishments in receiving States.

64. Mr. OKOLOVSKIY (Byelorussian Soviet Socialist Republic) said States should rigorously respect the principles and standards of diplomatic and consular law and in doing so should adopt all the measures needed to prevent hostile acts against representatives and missions and to bring the perpetrators of such acts to justice. In that respect, emphasis should be placed on prevention. In addition, persons enjoying diplomatic and consular privileges and immunities were, in respect of those immunities, bound to respect the laws and regulations of receiving States.

65. The Byelorussian SSR was party to nearly every international agreement in effect in that connection, and article 4 of its penal code made provision for extremely severe penalties against anyone committing an act of terrorism against a diplomatic or consular mission or its staff.

66. While each State had its own concerns and difficulties, no State could serve its own interests by treading on the interests of other States or of the international community. That was shown in the events which had taken place in the Middle East, where aggression had been perpetrated against a sovereign State. His delegation supported Security Council resolution 667 (1990) which firmly condemned the acts committed by Iraq against diplomatic premises and staff in the State of Kuwait. It also unreservedly condemned all acts of violence committed against diplomats engaged in activities which were aimed at establishing mutual co-operation and understanding among peoples.

67. The international community should strive to devise practical measures to strengthen the system established by the agreements now in force on the question. In that connection, he said the coming into force of the Vienna Convention of 1975 on the representation of States in their relations with international organizations would be a welcome development. Some action in the field of diplomatic law should also be envisaged.

68. On 27 July 1990, the Supreme Soviet of the Byelorussian SSR adopted a Declaration on the sovereign Statehood of the Republic, proclaiming the independence of the Soviet Socialist Republic of Byelorussia in its foreign relations and announcing the intention of turning its territory into a zone exempt from nuclear weapons and making the Republic of Byelorussia a neutral State. Those plans called for the development of regional and bilateral co-operation and the creation of the necessary diplomatic and consular institutions. Within the framework of the agenda item under review, such action could mean reforming the legislation already in existence in that respect.

69. His delegation felt that the examination by the General Assembly of concrete cases of violation of the security and safety of diplomatic and consular missions could help to strengthen the responsibility of States in respect of the obligations incumbent on them and was in favour of maintaining the system of reports drawing attention to cases of serious violation.

70. Mr. MONTES DE OCA (Mexico) observed that the note he had addressed to the Secretary-General in the preceding session, which had appeared at that time in document A/INF/44/5, had been reproduced in the report contained in document A/45/455. By reading that document, it could be seen that other notes had also been issued twice, which did not perhaps reflect a rational utilization of the Secretariat's resources.

71. Again on the question of economy of effort, he said his delegation would like the Secetariat to provide the Committee with a list of the 13 international treaties deposited with the Secretary-General in the field of diplomatic and consular privileges and immunities. Such a list would greatly facilitate the task of the delegations. In the same general connection, he said that the reproduction year after year of the list of States Parties to the Conventions could be dispensed with since those lists showed hardly any differences from year to year and duplicated other publications. On the other hand, the publication of a list of States not Party to the Conventions might be more judicious and effective in that it would certainly give them greater incentive to adhere to those instruments.

72. In the same constructive spirit, he proposed a few other improvements: in the report of the Secretary-General one or two paragraphs should be devoted to an analysis of the situation as shown in the communications received; communications from States should be issued systematically, by subject and according to the severity of the violations reported, rather than in alphabetical order; there might be no need to reproduce notes in which no incident was reported *in extenso*; intergovernmental and international organizations should also inform the Secretary-General of acts against them.

73. In his report, the Secretary-General should also define the type of incident which States should report to him. He noted that during the debate concepts larger than that of "serious violation" had emerged and cited the example of "hostile act". One note mentioned "violations of diplomatic immunity" in December 1989 and January 1990, which had included the telephotography of the interior of diplomatic premises and the use of music to harass the staff working in them.

74. His delegation wished to point out that although the report of the Secretary-General contained no notes concerning the incident, his country had had the honour the preceding year, when the subject of the situation in Central America had been under review in the Committee, of calling for the withdrawal of the armed forces which had invaded Panama and for absolute respect for the obligations incumbent on States under the Vienna Conventions on Diplomatic and Consular Relations. In that spirit, it had voted for resolution CP/RES.536 adopted in that connection by the Organization of American States on 8 January 1989 and had allied itself with the authors of the statement emanating from the seventh ordinary meeting of the Permanent Consultation and Political Concertation Mechanism ("Rio Group") held in Mexico City on 29 and 30 March 1990.

75. Speaking before the forty-fifth session of the United Nations General Assembly on 1 October 1990, Mr. Carlos Salinas de Gortari, President of Mexico, had quite properly evoked the situation now prevailing in Iraq and Kuwait and had called for absolute respect of the diplomatic conventions of Vienna.

76. Mr. BYKOV (Union of Soviet Socialist Republics) said that strict observance of the generally recognized standards of diplomatic law was an important factor in international stability, the strengthening of co-operation among States and the maintenance of a dependable international order. With regard to international law, he said the host State should guarantee normal conditions of operation for diplomatic and consular missions, which would require them to take the measures needed to protect the premises of those missions against any intrusion and to see that the security, safety, honour and dignity of the members of the missions and their families was not jeopardized.

77. In its resolution 43/167, adopted by consensus, the General Assembly had urged States to take all necessary measures to ensure the protection, security and safety of missions and of diplomatic and consular representatives on their territory. The Soviet Union rigorously respected its obligations in that respect as was shown by the fact that now that there were 120 embassies and many consulates in the USSR, no case of violation had been reported during the period under review. The report of the Secretary-General (A/45/455 and Add.1) also showed the importance which States attached to the matter under review. Nevertheless, during the same period, the security and safety of missions and of diplomatic representatives had been put into jeopardy in a number of countries. In that connection, his country had conveyed information reproduced in document A/45/455/Add.1 concerning several cases of serious violation of the security and safety of the diplomatic missions of the Soviet Union and of its overseas personnel. In every case where the authorities of the State concerned had taken measures to end such violations and sanction their perpetrators, the USSR had not failed to convey its recognition.

78. In reviewing the question of the protection, security and safety of diplomatic and consular missions and representatives, silence could not be maintained regarding the illegal acts perpetrated by Iraq against diplomatic and consular missions and representatives in Kuwait, including acts of violence and breaches of the inviolability of missions and of the immunity of their staff. Through its unprovoked aggression against Kuwait and its annexation of that country, Iraq had flagrantly violated the United Nations Charter, the principles of international law and all standards of morality and civilized conduct. It was to be hoped that Iraq would hear the voice of the world community and re-establish international order. The resolutions adopted by the Security Council, in particular resolution 667 (1990), should be applied unconditionally.

79. Consideration of the item by the General Assembly should contribute to ensuring strict compliance by all States with their international obligations regarding the status of missions and to strengthening the rule of law in the field of diplomatic relations. That indeed was the purpose of the presentation, pursuant to General Assembly resolution 42/154, of reports of serious violations of the protection, security and safety of diplomatic and consular missions. Delegations also should consider what other measures should be taken to enhance the protection, security and safety of diplomatic and consular missions and representatives, and should exchange views on ways to strengthen existing agreements on the subject - in particular, the régime established by the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations - as well as to

(Mr. Bykov, USSR)

accelerate the entry into force of other agreements, including the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.

80. At a time when the world was emerging from the cold war and was moving from confrontation to dialogue and co-operation, and when relations between States were being expanded and broadened, thereby strengthening mutual understanding and trust, the already substantial role which diplomatic and consular missions played as instruments of communication and action would have to be increased. Accordingly, there was a practical necessity to enhance the protection and security of those missions and ensure that they were able to function normally, in the interest of all States.

81. Mr. MARTINEZ GONDRA (Argentina) observed that since the forty-third session of the General Assembly, serious acts of violence against diplomatic and consular officials or missions and internationally protected persons had hardly disappeared. In its note of 7 May 1990, his country drew the attention of the Secretary-General to a series of incidents which had occurred in various countries and which constituted serious violations of the personal immunity of Argentine diplomats and of Argentine State property. Those incidents had not been the work of individuals alone, for in some instances, certain States were implicated.

82. At the international level, legislative and administrative measures already in force should be supplemented by practical provisions which, with the agreement of the accredited diplomatic representatives in the country in question, would make it possible to enhance the security of delegations. Accordingly, instigators, organizers and perpetrators of attacks on the safety of missions and the security of diplomatic representatives and officials should be prosecuted. However, the most useful course of action would be to take preventive measures.

83. Also at the international level, strict compliance with diplomatic law and an increase in the number of signatories to international instruments would strengthen co-operation among States, which for his country was the key to success. Efforts therefore should be made to encourage accessions to the Vienna Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, including Diplomatic Agents (1973).

84. His Government noted with deep concern the consequences of foreign military invasions and intervention in the territory of sovereign States and the impact of conflicts which threatened the security and immunity of diplomatic envoys and missions, as had occurred in Panama. He urged Iraq to comply with the provisions of Security Council resolutions 664 (1990) and 667 (1990). Lastly, he particularly urged the States Parties to the Vienna Conventions to refrain from any act incompatible with the objectives and purposes of those instruments and to strengthen respect - which was indispensable - for the inviolability and immunities established by treaties and through international custom.

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85. Mr. HEROUY (Ethiopia) said that the blatant violations of the most basic norms of diplomatic relations taking place in certain regions, in Kuwait in particular, once again demonstrated that the item deserved thorough consideration. Like previous reports, the report of the Secretary-General (A/45/455 and Add.1) testified to an aberration in diplomatic relations: attacks on diplomatic missions and representatives were increasing, not to mention the many less serious violations which went unreported. Lamentations and exhortations would be of no avail unless the international community devised practical recommendations and took effective administrative and legal measures.

86. His country, which hosted 75 diplomatic missions and 20 international organizations, scrupulously fulfilled its obligations as a host State. Attacks against representatives of foreign States had been a criminal offence under Ethiopian law since 1957. His country had adequate domestic legislation for the protection of foreign States and their representatives. His Government would continue to discharge its obligations and was pleased that there had not been any violation on its soil of the protection, security and safety of diplomatic and consular missions and representatives.

87. His delegation welcomed the new ratifications of and accessions to the relevant international instruments, which demonstrated the universality of those instruments. However, that progress did not suffice, for it was also essential to adopt effective measures to ensure that their provisions were duly implemented. It was therefore necessary to continue with the current procedure for reporting violations in order to keep the international community aware of problems threatening relations among States. The practice should not become a routine one in which States perennially expressed indignation but did nothing. Administrative and legal measures must be adopted to enhance the protection of diplomatic personnel.

88. Beneficiaries of privileges and immunities also should be reminded scrupulously to observe and respect the laws, regulations and sensitivities of the receiving State, and should refrain from interference in its internal affairs. Unless the international community faced the problem squarely and gave it the consideration it deserved, in the long run abuses of diplomatic privileges and immunities would prove as detrimental to diplomatic relations as were attacks against missions.

89. Mr. ELHUNI (Libyan Arab Jamahiriya) said that his country deeply regretted the various acts of terrorism, assassinations and violence directed at certain diplomatic missions. It hoped that effective measures would be adopted - focusing mainly on protecting diplomatic premises - in order to ensure the effectiveness of diplomatic relations.

90. Libyan penal law already punished persons found guilty of attacks on the immunity of diplomatic missions. All countries should adopt legislation to that end in order to give effect to the relevant international conventions.

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(Mr. Elhuni, Libyan Arab Jamahiriya)

91. His country also abided by all international laws on the protection of diplomats. The solidarity of the international community required that all countries respect international law, whether based on political tradition or on agreements. As the United Nations Legal Counsel had stated in his introduction to the report of the Secretary-General, the essence of the problem was strict compliance with all rules and agreements on the security and safety of diplomatic personnel and missions.

92. With regard to document A/45/325 (letter dated 27 June 1990 from the Permanent Representative of Chad to the United Nations addressed to the Secretary-General), he fully rejected the alleged violations described in the text, which he declared unfounded. It was most regrettable that such a far-fetched report had been submitted to the Sixth Committee.

93. Mr. U PE THE IN Thin (Myanmar), speaking in exercise of the right of reply, said that his country had been implicated at the preceding meeting with regard to the protection of diplomatic missions at Yangon, its capital. His country was a signatory to the Vienna Conventions and scrupulously observed their provisions. His country's record on respect of the safety of diplomatic personnel was every bit as good as that of other States. It regretted that certain States had considered some incidents to be serious violations and that the question had been politicized and blown out of proportion.

94. The incidents in question had not been premeditated acts, and representatives of the national protocol services had met with the head of the Yangon diplomatic corps to discuss the situation. Full details would be provided to the Committee in due course, so that its members could fully understand the situation.

95. The CHAIRMAN announced that the debate on agenda item 137 was now concluded.

The meeting rose at 12.55 p.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

SIXTH COMMITTEE
8th meeting
held on
Tuesday, 2 October 1990
at 3 p.m.
New York

# SUMMARY RECORD OF THE 8th MEETING

Chairman: Mr. MIKULA (Czechoslovakia)

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AGENDA ITEM 136: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS

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The meeting was called to order at 3.20 p.m.

AGENDA ITEM 136: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (A/45/454)

1. Mr. SCHAETTI (Switzerland) said that his country, which had convened the Conference at which the additional Protocols of 1977 had been approved and which was a party to them, believed that it was most important for all the States parties to the Geneva Conventions of 1949 to become parties to the Protocols as well. The two instruments developed and gave concrete meaning to the Geneva Conventions by adapting them to the new kinds of armed conflict and by codifying and spelling out the rules of customary law. The result was that all international or domestic armed conflicts were now governed by the provisions of international law. In any event, application of the Protocols did not affect the legal status of the parties to a conflict or of the territories in which armed confrontations took place. Furthermore, the instruments emphasized the protection of the civilian population and the combatants. Specifically, Protocol I set out more coherently the fundamental provisions of the Conventions of The Hague, adding rules concerning the protection of the environment and of installations containing dangerous substances, particularly nuclear power stations.

2. In 1989, on the 125th anniversary of the adoption of the First Geneva Convention, the Swiss Federal Council, as depositary of the Geneva Conventions and their additional Protocols, had appealed to all States to adopt the necessary measures to ensure observance of humanitarian law. The aim of that appeal had been to secure the largest possible increase in the number of States parties to the additional Protocols, for that would invest those instruments with the same universal scope as the Geneva Conventions themselves. Currently, the number of States parties to Protocols I and II was 97 and 87 respectively.

3. Switzerland attached great importance to the question of the International Fact-Finding Commission which would come into being, in accordance with article 90 of Protocol I, once 20 States parties to the Protocol had recognized the Commission's competence. Already 19 declarations of recognition had been made. Once the number of declarations reached 20 the Swiss Government, in accordance with its terms of reference as depositary of the two instruments, would convene a meeting of all the States which had made declarations of recognition, with a view to electing the 15 members of the International Fact-Finding Commission. His delegation therefore invited all the States parties to Protocol I to join those 19 countries and participate in the establishment of the Commission and the election of its members. That would make it possible for the mechanism provided for in article 90 of Protocol I to become an effective weapon for the protection of victims of armed conflicts.

4. It was important to ensure that the rules of international humanitarian law should be applied universally and that humanitarian bodies such as the International Committee of the Red Cross (ICRC) which did outstanding work in promotion of the two Protocols, could carry out their missions effectively.

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5. Mr. TOMKA (Czechoslovakia) said that the number of States parties to the Protocols Additional to the Geneva Conventions of 1949 had quadrupled and that his country had ratified the Protocols at the beginning of 1990. In that connection, without the praiseworthy efforts of ICRC to secure the ratification of the Geneva Conventions and their additional Protocols, the number of States parties to those instruments would not be so high. The Geneva Conventions, with their 165 States parties, were perhaps the most widely accepted international instruments. Accordingly, ICRC, which was one of the 21 sponsors of the corresponding draft resolution submitted to the General Assembly at its current session more than deserved its observer status.

6. Just as important as the ratification of the additional Protocols were their implementation and observance. It was therefore important to make their content known, especially among members of the armed forces. In Czechoslovakia, an edition of the Protocols had been published for the army, appropriate changes had been made in various training programmes, and practical manuals were being prepared which explained the basic principles and rules of international humanitarian law. Furthermore, a greater number of lawyers was being engaged to serve with the Czechoslovak army at various levels. It was also expected that the national television service would contribute to the dissemination of international humanitarian law in its educational programmes.

7. Following the adoption of General Assembly resolution 43/161 on 9 December 1988, seven States had responded to the appeal contained in paragraph 4 of the resolution and had made declarations under article 90 of Protocol I recognizing the competence of the International Fact-Finding Commission to investigate complaints of violations of the obligations set forth in the Protocol. The Commission was a control mechanism which would begin to act as soon as two more States had made the necessary declarations. His Government was considering the possibility of making such a declaration, thus demonstrating its new approach to the verification and control of obligations undertaken, not only in the military and security sphere, where it had already accepted the verification established in the instruments of European application, but also in the sphere of human rights. In that connection the competent Czechoslovak authorities were considering the possibility of the country's accession to the Optional Protocol to the International Covenant on Civil and Political Rights and recognition of the competence of other control bodies, such as the Committee against Torture and the Committee on the Elimination of Racial Discrimination.

8. His delegation stressed that the provisions of the Geneva Conventions and the customary rules of international humanitarian law must be kept constantly in mind, as the Security Council had confirmed in several resolutions.

9. Mr. ELTCHENKO (Ukrainian Soviet Socialist Republic) said that his country, which was aware of the need to strengthen the body of principles which made up international humanitarian law and to promote the general recognition of that law, had ratified the Protocols Additional to the Geneva Conventions of 1949 on 18 August 1989. In doing so, the Ukrainian Soviet Socialist Republic had made a declaration in which, under article 90 of Protocol I, it had recognized the competence of the International Fact-Finding Commission in relation to any other High Contracting Party accepting the same obligation.

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(Mr. Eltchenko, Ukrainian SSR)

10. His country's Parliament, echoing the desire of the Ukrainian people to maintain relations of friendship and co-operation with other nations on a footing of equality, had proclaimed the intention of the Ukrainian Soviet Socialist Republic to transform itself in the future into a permanently neutral State, not forming part of any military bloc and faithful to non-nuclear principles.

11. Accordingly, his country was in favour of using peaceful means to resolve the international and internal problems of States. In that connection, the international community must do everything possible to avoid armed conflicts, both international and non-international, which unfortunately continued to occur in the world. For that reason, and in particular in view of the most recent events, it should be pointed out that the Geneva Conventions of 1949 and the additional Protocols thereto must serve as a basis to guarantee a minimum of protection in armed conflicts or similar situations. Those instruments should be transformed into an effective mechanism of international law with a view to eliminating the tension of conflicts and achieving the earliest possible reconciliation between the contending parties. In order to achieve that objective, the number of States parties to the additional Protocols should be increased. His country therefore appealed to those States parties to the Geneva Conventions of 1949 which had not already become parties to the additional Protocols to consider doing so as soon as possible.

12. Mr. FALLET (International Committee of the Red Cross) said that, pursuant to the mandate entrusted to it in the Geneva Conventions of 1949, the International Committee of the Red Cross (ICRC) had, *inter alia*, been working to strengthen international humanitarian law to ensure that the victims of armed conflicts received effective protection. The current situation in the world showed the urgent need for consolidating and implementing the existing body of international humanitarian law and for the universal acceptance of such law, as the General Assembly had declared in resolution 43/161 of 9 December 1988.

13. Despite the fact that the Charter of the United Nations prohibited recourse to the threat or use of force in international relations, a large number of conflicts were still giving rise to unspeakable suffering. The international community must take all necessary steps to resolve those conflicts and attenuate their effects. That was the purpose of international humanitarian law, which basically served to protect people who were not, or who were no longer, taking part in the hostilities.

14. At a diplomatic conference held in 1977, two additional Protocols to the Geneva Conventions of 1949 had been adopted, by consensus. Protocol I strengthened the law applicable to armed conflicts and Protocol II afforded legal protection to the victims of non-international armed conflicts. Since they had been ratified by some 100 States, the Protocols represented a substantial contribution to the improvement of the plight of the victims of armed conflicts, especially civilians.

15. In declaring the period 1990-1999 as the United Nations Decade of International Law, the General Assembly had reaffirmed its faith in the primacy of law in international relations. One of the main aims of the Decade was to secure the acceptance of international treaties by all States. The International

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(Mr. Fallet)

Committee of the Red Cross earnestly hoped that those States which had not yet ratified or acceded to the additional Protocols should do so without delay so that those instruments would have the same universal status as the Geneva Conventions of 1949.

## ORGANIZATION OF WORK

16. The CHAIRMAN reminded the members of the Committee that the list of speakers on agenda item 137 would be closed that evening at 6 p.m. and that the list of speakers on agenda item 135 was already open.

17. Moreover, in line with the recommendation of the General Assembly in paragraph 6 of resolution 44/35, he suggested that, as in previous years, the Committee should consider the report of the International Law Commission chapter by chapter in accordance with a timetable established in advance. In normal circumstances, he would have suggested that the debate should follow the order of the chapters of the report; however, given the fact that the Special Rapporteur for the draft code of crimes against the peace and security of mankind, Mr. Thiam, must remain in Europe until early November, he suggested the following timetable for the consideration of the various chapters of the report.

18. The chapters relating to the jurisdictional immunities of States and their property and the law of the non-navigational uses of international watercourses would be considered from 29 to 31 October; four meetings could be devoted to them. The chapters on State responsibility and international liability for injurious consequences arising out of acts not prohibited by international law would be considered from 1 to 5 November, in four meetings. The chapter relating to the draft code of crimes against the peace and security of mankind could be considered from 6 to 8 November, in four meetings. The chapters relating to relations between States and international organizations and other decisions and conclusions of the Commission could be considered on 8 and 9 November, in two meetings. As in previous years, those wishing to make a single statement on the report as a whole would be able to do so, but speakers who complied with the timetable drawn up by mutual agreement would in principle have priority over the former.

19. If he heard no objection, he would take it that the Committee agreed to the organization of work he had outlined.

20. It was so decided.

The meeting rose at 3.55 p.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

SIXTH COMMITTEE
9th meeting
held on
Wednesday, 3 October 1990
at 10 a.m.
New York

# SUMMARY RECORD OF THE 9th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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AGENDA ITEM 136: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (continued)

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Distr. GENERAL
A/C.6/45/SR.9
12 October 1990
ENGLISH
ORIGINAL: FRENCH

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The meeting was called to order at 10.15 a.m.

AGENDA ITEM 136: STATUS OF THE PROTOCOLS ADDITIONAL TO THE GENEVA CONVENTIONS OF 1949 AND RELATING TO THE PROTECTION OF VICTIMS OF ARMED CONFLICTS (*continued*) (A/45/454)

1. Mr. KOSMO (Norway), speaking on behalf of the five Nordic countries, noted with satisfaction that since the present item had last been discussed in the Sixth Committee in 1988, the number of States parties to Protocols I and II had risen from 77 to 97 and from 69 to 87 respectively. However, the Nordic countries regretted that the Protocols were still far from having the same universal adherence as the four Geneva Conventions of 1949. While the Protocols had contributed to the progressive development of international humanitarian law, they were to a large extent a codification and specification of principles already established under customary law and were recognized even by States which had not yet ratified the Protocols, a point which should prompt such States to do so.

2. When becoming parties to Protocol I (A/32/144, annex I), States should also consider making the declaration provided for in article 90, paragraph 2, to the effect that they recognized the competence of the International Fact-Finding Commission in relation to other parties which had accepted the same obligations.

3. Universal adherence to the Protocols would consolidate the existing body of international humanitarian law, which was currently being grossly violated by Iraq. By taking hostages, pillaging and committing other acts of violence against civilians, and by preventing the International Committee of the Red Cross and other humanitarian organizations from carrying out their mission, Iraq was violating the fundamental rules of the Geneva Conventions of 1949, in particular the fourth Convention relative to the Protection of Civilian Persons, as well as Protocol I.

4. The Nordic countries appealed to all States parties to the Geneva Conventions and the Protocols to live up to the obligation they had contracted to respect and to ensure respect for the Conventions and the Protocols in all circumstances.

5. Following the recent World Summit for Children, the Nordic countries wished to reiterate that the international community should do its utmost to protect children from being exploited as soldiers. The forums concerned with the Geneva Conventions were particularly suitable for that task.

6. The Nordic countries stood ready to co-ordinate the work of preparing a draft resolution on the present agenda item.

7. Mr. LIAO Jincheng (China) said that the two Protocols Additional to the Geneva Conventions of 1949 (A/32/144, annexes I and II) were to a great extent a codification of international customary law. They had strengthened the protection of civilian populations and combatants and had broadened the scope of application of the Geneva Conventions. Moreover, they had made humanitarian rules applicable to armed conflicts in which peoples were fighting against colonial domination and

alien occupation and against racist régimes, and had relaxed the requirements under which guerrilla forces could be considered legal combatants. Those developments were in conformity with the interests of the international community and were indications of the progress of civilization. For those reasons, China, which had always respected humanitarian law in armed conflicts, had become a State party to both Protocols in 1983.

8. Although it was gratifying to note that many countries had ratified the Protocols or had acceded to them since the 1988 General Assembly session, it was regrettable that some States, including some influential Powers, had not yet done so or had become parties to only one of the Protocols. Until both Protocols were widely accepted by all States, as in the case of the Geneva Conventions of 1949, it would be necessary for the General Assembly to review regularly the status of the Protocols.

9. Mr. VERENIKIN (Union of Soviet Socialist Republics) said that one reason why the Geneva Conventions of 1949 and the Protocols of 1977 could not yet attenuate the seriousness of armed conflicts to the extent that they should was that many States were not yet parties to the Protocols. Since those instruments strengthened the protection of victims of armed conflicts, limited the choice of the means of armed struggle and required that combatants respect humanitarian principles, the Soviet Union had ratified the Protocols in 1989 and had made, in accordance with article 90 of Protocol I, a declaration to the effect that it recognized, on a basis of reciprocity, the competence of the International Fact-Finding Commission.

10. Because the ratification of the Protocols by the largest possible number of States, notably by those States having armies of considerable size, would help to humanize international relations, his delegation hoped that those instruments would become universally accepted in the near future.

11. Mr. EL HUNI (Libyan Arab Jamahiriya) said that his country had been one of the first to become a party to the the Protocols Additional to the Geneva Conventions of 1949. His country maintained close ties of co-operation with the International Committee of the Red Cross (ICRC), as evidenced by the colloquium organized in May 1990 in Benghazi, under the auspices of the Libyan Red Crescent, in which law professors, military servicemen and representatives of various organizations involved in the propagation of international law participated, as well as representatives of the ICRC. As a result of that colloquium, serious action had been undertaken to better acquaint the population with the rules of international humanitarian law and the rights which it guaranteed to victims of armed conflicts.

12. In view of the crises which the world was experiencing, it was important to redouble efforts to consolidate the humanitarian concepts proclaimed in the Protocols and to integrate the provisions of those instruments into the laws of the various nations. His delegation fully subscribed to the appeal launched by the representative of ICRC at the preceding meeting to include in the programme for the United Nations Decade of International Law concrete action to examine in greater depth and consolidate the humanitarian principles set forth in the Protocols.

13. Mr. DASTIS (Spain) noted with satisfaction that about 20 countries had joined the list of States parties to the Protocol Additional to the Geneva Conventions of 1949 (A/32/144, annexes I and II) since the forty-third session of the General Assembly. For its part, Spain had deposited its instruments of ratification on 21 April 1989 and had made, inter alia, the declaration provided for in article 90 of Protocol I by which Spain recognized fully and without special agreement, relative to any other High Contracting Party that accepted the same obligation, the competence of the International Fact-Finding Commission to investigate allegations of failure to fulfil the obligations imposed by the Protocol.

14. Recent events had only confirmed the necessity for every State, without exception, to observe the Protocols. Spain therefore urged those States which were not yet parties to the Protocols to ratify them or accede to them as soon as possible, and urged those which were parties to only one of the Protocols to extend their participation to both instruments.

15. The standards of protection set forth in the two Protocols represented fundamental principles of humanitarian law that reflected elementary humanitarian considerations which should apply to all human beings, whether or not their struggle was deemed legitimate.

16. His delegation hoped that the attention devoted by the Sixth Committee to the Protocols, together with the praiseworthy efforts of the International Committee of the Red Cross, would help to ensure the universality of those two instruments in the near future.

The meeting rose at 10.45 a.m.

UNITED NATIONS
General Assembly
FORTY-FIFTH SESSION
*Official Records*

**SIXTH COMMITTEE**
**10th meeting**
**held on**
**Friday, 5 October 1990**
**at 3 p.m.**
**New York**

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## SUMMARY RECORD OF THE 10th MEETING

Chairman: Mr. MIKULKA (Czechoslovakia)

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AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION

AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES

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11 October 1990
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The meeting was called to order at 3.15 p.m.

## AGENDA ITEM 135: OBSERVER STATUS OF NATIONAL LIBERATION MOVEMENTS RECOGNIZED BY THE ORGANIZATION OF AFRICAN UNITY AND/OR BY THE LEAGUE OF ARAB STATES (*continued*) (A/45/438)

1. Mr. HUSSAIN (Pakistan) said that the recent changes in the global political landscape bore ample testimony to the triumph of human values and individual freedoms. Member States were more sensitive than ever before to upholding and safeguarding human rights and fundamental freedoms. His delegation condemned the violation of human rights and individual freedoms in any part of the world. The United Nations Charter reaffirmed the faith of all peoples in the fundamental human values: dignity, equality, individual freedom and the attainment of self-determination and independence by all those who were still deprived of them.

2. It was a paradox that in the current age of enlightenment there were still areas where people were denied their basic rights. In the Middle East, Israel continued to follow a policy of repression of the Palestinian people. In South Africa, a small minority ruled over the majority, denying them their fundamental rights and treating them like second-class citizens. Against that backdrop the people of those regions had launched national freedom movements for the liberation of their territories. Pakistan fully supported the right of those people to self-determination, and recognized the liberation movements that represented them. Most of those movements had been recognized by the Organization of African Unity and by the League of Arab States, and participated fully, as observers, in the work of the United Nations and its various agencies.

3. His delegation believed that those national liberation movements, which were called upon to participate in various international conferences, should enjoy the privileges and immunities necessary for the effective performance of their functions. Pakistan had permitted the Palestine Liberation Organization to open a mission in Islamabad, and had extended to it the necessary privileges and immunities. It therefore urged all States, and particularly those countries which hosted international conferences, to accord to the observer delegations of the liberation movements the same facilities, privileges and immunities as were provided to States by the Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character.

4. The recent developments in South Africa represented a step in the right direction, but fell far short of the eradication of *apartheid*. That abhorrent system, which had rightly been described as a crime against humanity, should be eradicated in all its forms. Colonialism was a relic of the past, and the days of antiquated repressive and brutal systems were numbered. Pakistan was confident that those liberation movements would succeed in gaining independence from the colonial régimes and that their people would soon be the citizens of free nations.

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5. Mr. SOKOLOVSKIY (Byelorussian Soviet Socialist Republic) said that the participation of the national liberation movements in the work of the United Nations and of other international organizations and conferences was an important means of supporting the just struggle waged by those movements; it would significantly advance the search for political solutions to regional conflicts, and the attainment of the right of peoples to self-determination.

6. The granting of observer status and the corresponding privileges and immunities to the national liberation movements, in accordance with the provisions of the 1975 Vienna Convention on the Representation of States in Their Relations with International Organizations of a Universal Character, would enable those movements to derive full benefit from the opportunities afforded by international organizations and conferences, and therefore to operate in a more effective manner.

7. In its resolution 43/160 B, the General Assembly had urged all States that had not done so, in particular those which acted as host to international organizations or conferences, to consider as soon as possible the question of ratifying, or acceding to, the Vienna Convention. In the same resolution, the Assembly had called upon the States concerned to accord to the delegations of the national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States and accorded observer status by international organizations, the facilities, privileges and immunities necessary for the performance of their functions, in accordance with the provisions of the said Convention.

8. The Byelorussian SSR had been one of the first States to ratify the 1975 Vienna Convention, and implemented its provisions whenever international meetings were held in its territory.

9. The CHAIRMAN said that the Committee had concluded its consideration of agenda item 135.

## AGENDA ITEM 144: REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE OF THE ORGANIZATION (A/45/33)

## AGENDA ITEM 139: PEACEFUL SETTLEMENT OF DISPUTES BETWEEN STATES (A/45/436 and Add.1, A/45/522-S/21795, A/45/527-S/21801; A/C.6/45/L.1)

10. Mr. MAVROMMATIS (Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization) said, with reference to agenda item 144, that the Special Committee had met at United Nations Headquarters in New York from 12 February to 2 March 1990. In accordance with its mandate under General Assembly resolution 44/37 of 4 December 1989, the Special Committee had dealt with the following topics: (a) the maintenance of international peace and security; (b) the peaceful settlement of disputes between States; (c) the rationalization of the procedures of the United Nations. In keeping with its past practice, the Special Committee had established a Working Group chaired by the Chairman of the Special Committee. There had also been intensive informal consultations.

(Mr. Mavrommatis)

11. With regard to the maintenance of international peace and security, the Special Committee had been able to combine two working papers on United Nations fact-finding activities, one submitted by Belgium, the Federal Republic of Germany, Italy, Japan, New Zealand and Spain during its 1989 session (A/AC.182/L.60/Rev.1) and the other submitted by Czechoslovakia and the German Democratic Republic (A/AC.182/L.62/Rev.1). That had been the result of a joint discussion on the two working papers and further work by the sponsors, which on the basis of consultations with one another and with other members of the Special Committee, had combined the two papers into a single text. The new paper appeared in document A/AC.182/L.66 and was sponsored by Belgium, Czechoslovakia, the Federal Republic of Germany, the German Democratic Republic, Italy, Japan, New Zealand and Spain. It had been reproduced in paragraph 68 of the Special Committee's report (A/45/33). Paragraph 26 and the following paragraphs of that report contained an account of the work of the Working Group on the first two papers. The unified paper from the two groups of sponsors represented a major step towards the completion of an important aspect of the Special Committee's work on the agenda item. He hoped that the Special Committee would be able to finalize its work on the paper at its next session and to present it to the General Assembly at its forty-sixth session.

12. Under the topic dealing with the peaceful settlement of disputes between States, the Special Committee had examined the report of the Secretary-General on the progress of work on the draft handbook on the peaceful settlement of disputes between States (A/AC.182/L.64). The Secretariat would complete work on the handbook in 1990 and the Secretary-General was expected to submit a report on it at the 1991 session of the Special Committee. He wished to emphasize the usefulness of the handbook in assisting States, particularly developing countries, in the area of peaceful settlement of disputes.

13. The Special Committee had also held a general exchange of views on the peaceful settlement of disputes between States. The main points of delegations' interventions could be found in paragraphs 71-77 of its report. A number of delegations had referred to the role of the International Court of Justice, the increasing acceptance of the compulsory jurisdiction of the Court and the creation of the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice, for which they had expressed appreciation.

14. Under the topic dealing with rationalization of the procedures of the United Nations, the Special Committee had completed a draft document (A/AC.182/L.67) which it was submitting to the General Assembly for consideration and adoption. The document was reproduced in paragraph 86 of the report.

15. The adoption of paragraph 1 of the aforesaid document had caused some difficulties. While a majority of delegations had favoured the original wording of paragraph 1, as contained in document A/AC.182/L.43/Rev.1 provisionally agreed to at the 1989 session, certain delegations had expressed reservations about the words "without a vote". The new paragraph reflected wording acceptable to all members of the Special Committee. The paragraph also reflected the increasing trend, so

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(Mr. Mavrommatis)

marked at the forty-third and forty-fourth sessions of the General Assembly, towards achieving consensus resolutions wherever possible.

16. Also at the Special Committee's 1990 session, the delegation of the Soviet Union had submitted a working paper (A/AC.182/L.65), which appeared in paragraph 14 of the Special Committee's report. The paper had not been considered at that session. Members of the Sixth Committee might wish to express their views on the working paper during the debate on the Special Committee's report. He wished to draw attention to some points referred to in the paper, namely, the broadening of the peace-making efforts of the Secretary-General, the review by the General Assembly of the Secretary-General's annual reports on the work of the Organization and the question of the implementation of United Nations resolutions.

17. The Special Committee had had a most productive session and had certainly benefited from the new, favourable climate in international relations. That was reflected clearly in the co-operation shown by the two groups of sponsors, western European and eastern European, in producing a single, unified paper on fact-finding; in the goodwill shown by the United Kingdom and France on the one hand and the Soviet Union on the other concerning the rationalization of United Nations procedures; and, lastly, in the constructive contributions made by the non-aligned and other developing countries members of the Special Committee.

18. The events of the current year, both positive and negative, and the action taken by the United Nations underlined the Organization's central role in world affairs. Respect for the Charter, full implementation of its provisions and strengthening of the role of the Organization were fundamental in an enlightened United Nations era of peace and security for all States. The Special Committee was entrusted with enhancing those very tasks.

19. In conclusion, he wished to say that the Chairmanship of the Special Committee, in itself a matter of pride for a small State such as Cyprus, was especially so in that the Special Committee's work was directly related to strengthening the United Nations in precisely those areas that bore strongly on the Organization's efforts to bring about a solution to the problems affecting many countries, Cyprus included.

20. Mr. MARTINEZ GONDRA (Argentina) said that his delegation believed that the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization had made significant progress at its latest session in clarifying the main aspects of documents A/AC.182/L.60/Rev.1 and A/AC.182/L.62/Rev.1, which were vital to laying the bases for its future work on United Nations fact-finding activities.

21. Following the constructive debates that had taken place on the question of the maintenance of international peace and security, the flexibility of delegations sponsoring the two documents had made it possible to combine them into a single, unified document (A/AC.182/L.66). While much remained to be done before the drafting of the document was finalized, his delegation believed that the positive

(Mr. Martinez Gondra, Argentina)

atmosphere in the Special Committee would prove an important factor in harmonizing the various views that existed on the question.

22. Turning to document A/AC.182/L.66 itself, since fact-finding was a useful means of contributing to the maintenance of international peace and security, of ascertaining the facts in an international dispute and of preventing or settling international disputes which might threaten international peace and security, he suggested that those ideas should be spelt out at the beginning of the document. It would also be appropriate to transfer to the first part of the document another key element, namely the consent of the receiving State to a visit by a fact-finding mission, so as to establish clearly the basis on which the activities of such missions could be carried out. It would be unrealistic to promote such activities without the prior consent of the receiving State. A broad formulation was therefore needed which referred to the Charter of the United Nations in general rather than to specific articles thereof.

23. Concerning other provisions as to when and where the receiving State might give its consent to a visit by a fact-finding mission, the utmost caution must be exercised since it would be counterproductive to request explanations from the State or to pressure it in any way to respond. His delegation also believed that States should be encouraged to admit fact-finding missions at an early date.

24. With regard to paragraphs 35-37 of document A/AC.182/L.66, he continued to doubt the wisdom of gathering information through United Nations information centres. The information centres should not be used for purposes other than those for which they had been established, and some innovations in that area should be given more thorough consideration.

25. He believed that the Secretariat should continue its valuable work on the handbook on the settlement of disputes and awaited the submission of the final chapter of the handbook (chapter III) with interest. Once the Consultative Group had considered that chapter, the handbook as a whole should be examined so that detailed observations could be made on it, on each section and on the annexes. He urged delegations to participate fully in that task.

26. For a number of years, the rationalization of existing United Nations procedures had been included in the agenda of the Special Committee. Thanks to the flexibility of all the delegations which had participated in its 1990 session, the Special Committee had been able to complete a draft document for submission to the General Assembly for its consideration (A/AC.182/L.67). Although his delegation accepted the general thrust of that document, it felt that provisions already contained in annexes to the rules of procedure of the General Assembly were to some extent reiterated in it, which might result in conflicting interpretations.

27. With regard to paragraph 1 of that document, he noted that in his delegation's opinion, the voting procedure laid down in Article 18 of the Charter and reaffirmed in the rules of procedure of the General Assembly was the appropriate rule to follow in adopting decisions and resolutions. The practice of adopting resolutions

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and decisions without a vote was an exception to that rule, rather than the other way round. In conclusion, he pointed out that the Spanish term "textos concertados" in paragraph 1 of document A/AC.182/L.67 did not, in the opinion of his delegation, mean "agreed texts". The Spanish term related to the harmonization or arrangement of diverse ideas concerning a text.

28. Mr. ELTCHENKO (Ukrainian Soviet Socialist Republic) said that the Charter of the United Nations was directly linked to the dramatic events which had taken place in Europe. For that reason, within the context of the agenda items before the Sixth Committee, the unification of Germany could not be left out of consideration. That fact was particularly important for the Ukrainian Soviet Socialist Republic, which had suffered great losses during the Second World War. On 3 October, the Parliament of that country had approved a declaration stating that the people of the Ukrainian SSR, who had for centuries suffered the fate of a divided nation, understood the feelings of the German people. The unification of Germany opened up new prospects for lasting peace in Europe, an important requirement in that connection being the fact that Germany recognized the inviolability of the borders established after the Second World War. His delegation welcomed the obligations included in the Treaty on the Final Settlement with respect to Germany, by virtue of which Germany had promised to renounce the production and possession of weapons of mass destruction, to reduce its military forces significantly and to guarantee that in future Germany would be characterized by peace alone. It was to be hoped that the unification of Germany would help to strengthen peace and to promote the satisfactory performance of the tasks of the United Nations.

29. His delegation had given careful consideration to the report of the Special Committee on the Charter and to the report of the Secretary-General on the preparation of a draft handbook on the peaceful settlement of disputes between States. The Special Committee had made progress in the work it had carried out in February and March 1990. That progress reflected the positive changes which had taken place in the world. The Ukrainian SSR, whose Parliament had declared in July 1990 that it recognized the priority of international law over municipal law, was pleased to note the participation of the United Nations in the process of building a new world of peace and developing a new political thinking and juridical methods for ensuring international peace and security.

30. Unfortunately, the principles laid down in the Charter of the United Nations were still being violated, the most recent example being the act of aggression committed by Iraq against Kuwait, which had been condemned by the world community. The Security Council and the General Assembly had to resolve questions relating to international peace and security, and in order to do so they needed full information concerning those issues. The Ukrainian SSR supported the strengthening of the United Nations capacity in fact-finding, data collection and analysis and the putting together of an objective picture of areas where existing or potential threats to security were to be found.

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(Mr. Eltchenko, Ukrainian SSR)

31. The Special Committee on the Charter had done valuable work during its most recent session. Trends favourable to co-operation and reconciliation had enabled the sponsors of two texts to prepare a single unified working paper concerning fact-finding by the United Nations in the field of the maintenance of international peace and security (A/AC.182/L.66). That document did not fully reflect the position taken by the Ukrainian SSR. In view of the diversity of interests, points of view and approaches among States, a formula which fully satisfied all delegations was difficult to find. The Ukrainian SSR supported the unified document in general, but wished to draw attention to paragraph 69 of the Special Committee's report (A/45/33), in which it was stated that the sponsors had confirmed their intention to prepare a revised version of document A/AC.182/L.66, taking account of the observations formulated in the course of informal consultations.

32. His delegation proposed that consideration should be given to the possibility of redrafting the text of paragraph 23 of document A/AC.182/L.66. The Convention on the Privileges and Immunities of the United Nations made a distinction between three categories of persons: representatives of States, United Nations officials, and experts on United Nations missions. The Convention conferred different privileges and prerogatives on the members of those three groups. In addition, paragraph 30 of document A/AC.182/L.66 seemed to indicate that the fact-finding missions would be made up of experts; but granting the same privileges and immunities to those members of a mission who enjoyed diplomatic status as those granted to experts on mission for the United Nations would not be justifiable. Thus, additional work was required in that connection.

33. With regard to the peaceful settlement of disputes between States, his delegation supported the proposal submitted by Romania concerning the consideration of that issue in 1991 within the context of the United Nations Decade of International Law. His delegation also hoped that the draft handbook on the peaceful settlement of disputes between States would be finalized in time for the next session.

34. With regard to the rationalization of existing United Nations procedures, the document prepared on the basis of proposals submitted by France, the Union of Soviet Socialist Republics and the United Kingdom contained many useful recommendations and could be adopted by consensus by the Committee and the General Assembly.

35. In the light of the experience acquired and of the proposal submitted by Romania, consideration should be given to the possibility of using the Special Committee to prepare a programme for the development of international law within the framework of the United Nations Decade of International Law. The proposal submitted by the USSR concerning ways of increasing co-operation between the United Nations and regional organizations and the extension of the Secretary-General's efforts to promote peace deserved particular attention.

The meeting rose at 4.05 p.m.